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• Proposed Orders

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COMMISSIONERS
JEFF HATCH-MILLER - Chairman
WILLIAM A. MUNDELL
MIKE GLEASON
KRISTIN K. MAYES
BARRY WONG



BRIAN C. MCNEIL
Executive Director

ARIZONA CORPORATION COMMISSION

DATE: DECEMBER 21, 2006

DOCKET NO: T-03774A-06-0271

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Amy Bjelland. The recommendation has been filed in the form of an Order on:

ABOVENET COMMUNICATIONS, INC.
(FINANCE)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00 p.m.** on or before:

JANUARY 2, 2007

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

JANUARY 16, 2007 and JANUARY 17, 2007

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Secretary's Office at (602) 542-3931.


BRIAN C. McNEIL
EXECUTIVE DIRECTOR

1
2 **BEFORE THE ARIZONA CORPORATION COMMISSION**

3 COMMISSIONERS

4 JEFF HATCH-MILLER, Chairman
5 WILLIAM A. MUNDELL
6 MIKE GLEASON
7 KRISTIN K. MAYES
8 BARRY WONG

9 IN THE MATTER OF THE APPLICATION OF
10 ABOVE NET COMMUNICATIONS, INC. TO
11 INCUR DEBT AND/OR ENCUMBER ASSETS TO
12 GUARANTEE DEBT INCURRED BY AN
13 AFFILIATE.

DOCKET NO. T-03774A-06-0271

DECISION NO. _____

14 ORDER

15 Open Meeting
16 January 16 and 17, 2007
17 Phoenix, Arizona

18 **BY THE COMMISSION:**

19 Having considered the entire record herein and being fully advised in the premises, the
20 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

21 FINDINGS OF FACT

22 1. On April 24, 2006, AboveNet Communications, Inc. ("AboveNet" or "Applicant")
23 filed an application with the Arizona Corporation Commission ("Commission") for authorization to
24 encumber its assets in the State of Arizona in connection with providing its guarantee, serve as
25 borrower or co-borrower, or to otherwise provide security in connection with financing up to \$500
26 million for its parent, AboveNet, Inc. ("Parent") (Parent and AboveNet, collectively, the
27 "Borrowers"). The stated purpose of the proposed financing is for general corporate purposes, capital
28 expenses and working capital, as well as for acquisition of other telecommunication companies
and/or telecommunication equipment. AboveNet wishes to make asset pledges including security
interest in its receivables, tangible personal property, equipment, and intellectual property as
collateral security for the debt.

2. On September 7, 2006, Applicant filed a Notice of Filing Affidavit of Publication.

1 3. On September 28, 2006, the Commission's Utilities Division ("Staff") filed a Staff
2 Report recommending approval of the application to pledge assets as a guarantee for affiliate debt
3 and denial of the request to incur debt.

4 4. On October 16, 2006, AboveNet filed its Comments on the Staff Report. In its
5 Comments, AboveNet asserted that because it is a foreign public service corporation using its
6 facilities to provide interstate communications services, it does not need Commission approval to
7 issue any evidences of indebtedness pursuant to A.R.S. § 40-301(D). AboveNet further stated that, in
8 addition to Staff's recommendation that AboveNet be authorized to pledge assets as a guarantee for
9 its Parent's debt, Staff should specifically recommend that AboveNet be authorized to encumber its
10 assets if AboveNet were to incur its own debt, consistent with its argument that it does not need
11 Commission approval to incur debt.

12 5. By Procedural Order issued on November 1, 2006, Staff was ordered to file a response
13 to AboveNet's Comments.

14 6. On November 15, 2006, Staff filed its Response to Company's Comments. Staff
15 stated that AboveNet is correct in its analysis regarding its authority to incur debt pursuant to A.R.S.
16 § 40-301(D). However, Staff stated that AboveNet's request to encumber its assets is a transaction
17 which does require Commission approval. Staff further stated that during the discovery process in
18 this matter, AboveNet indicated that it would not incur any debt on its own, and Staff relied upon this
19 set of circumstances in conducting its analysis and reaching its conclusions in this matter.

20 7. On November 29, 2006, by Procedural Order, a procedural conference was scheduled
21 for December 11, 2006, in order to discuss the issues raised by the parties in their filings. At the
22 procedural conference AboveNet and Staff represented that there was no material disagreement with
23 regard to the recommendations in the Staff Report and that so long as Staff's recommendations would
24 not be interpreted as a permanent restriction on AboveNet's ability to incur debt, AboveNet had no
25 objection to Staff's recommendations.

26 8. AboveNet provides fiber optic based competitive data video and internet services to
27 customers in 31 states and the District of Columbia. It is a reseller of non-switched high-capacity
28 fiber-optic telecommunications services, and in Arizona has invested in a switch and in facilities for

1 intrastate telecommunications and also provides intrastate services through resale arrangements with
2 other carriers.

3 9. AboveNet has requested authorization to serve as borrower or co-borrower for
4 financing up to \$500 million and to encumber its assets by providing a guarantee or other security in
5 connection with the financing by itself or the Parent. The interest rate will likely be the market rate
6 for similar financing and will not be determined until each financing is finalized. According to Staff,
7 it is expected that the revolving senior credit facility will bear interest at a rate equal to LIBOR¹ plus
8 300 basis points, or the bank's prime rate plus 150 basis points.

9 10. Staff reviewed the proposed transaction and determined that it would not impair the
10 financial status of AboveNet, would not impair its ability to attract capital, nor would it impair the
11 ability of AboveNet to provide safe, reasonable and adequate service. Staff stated that although the
12 application implies that either Applicant or the Parent may incur the debt, in response to Staff data
13 requests AboveNet stated that only the Parent, and not AboveNet, would borrow funds, and that
14 Applicant would only encumber its assets in support of the Parent's borrowing. Staff stated that
15 AboveNet's customers have alternative service providers and would not experience significant harm
16 in the event that Applicant or Parent has financial difficulties.

17 11. Staff recommended approval for AboveNet to pledge assets as a guarantee or to
18 provide other forms of security for the proposed financing of up to \$500 million by the Parent subject
19 to the condition that all Arizona customer deposits and prepayments be excluded from encumbrance,
20 or if they are, that they are secured by a bond which is not included in the pledged collateral.

21 12. Staff further recommended authorizing AboveNet to engage in any transactions and to
22 execute or cause to be executed any documents necessary to effectuate the authorizations requested
23 with the application. Staff recommended that AboveNet file copies of the executed loan closing and
24 security documents pertaining to any authorization granted with Docket Control, as a compliance
25 item in this docket, within 90 days of each transaction.

26 13. Staff did not recommend authorization for AboveNet to incur new debt.
27

28 ¹ London InterBank Offered Rate.

1 14. Staff's recommendations should not be interpreted as a permanent restriction on
2 AboveNet's ability to incur debt.

3 15. Staff's recommendations are reasonable and should be adopted.

4 **CONCLUSIONS OF LAW**

5 1. Applicant is a public service corporation within the meaning of Article XV of the
6 Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

7 2. The Commission has jurisdiction over Applicant and the subject matter of the
8 application.

9 3. Applicant's request to encumber its assets is a transaction that requires Commission
10 approval. However, pursuant to A.R.S. §40-301(D), AboveNet's ability to issue debt remains
11 unrestricted as discussed herein.

12 4. Notice of the application was given in accordance with the law.

13 5. The financing approved herein is for lawful purposes within AboveNet
14 Communications, Inc.'s corporate powers, is compatible with the public interest, with sound financial
15 practices, and with the proper performance by AboveNet Communications, Inc. of service as a public
16 service corporation, and will not impair AboveNet Communications, Inc.'s ability to perform that
17 service.

18 6. The financing approved herein is for the purposes stated in the application and is
19 reasonably necessary for those purposes, and such purposes are not, wholly or in part, reasonably
20 chargeable to operating expenses or to income.

21 **ORDER**

22 IT IS THEREFORE ORDERED that the application by AboveNet Communications, Inc. for
23 authorization to encumber assets in connection with new financing as provided for herein, shall be,
24 and hereby is, granted, conditioned upon its compliance with Staff's recommendations as described
25 herein.

26 IT IS FURTHER ORDERED that Staff's recommendations set forth herein are hereby
27 adopted.

28 IT IS FURTHER ORDERED that AboveNet Communications, Inc. shall comply with the

1 adopted Staff recommendations as set forth herein.

2 IT IS FURTHER ORDERED that AboveNet Communications, Inc. shall file, as a compliance
3 item in this docket, a statement of whether all Arizona customer deposits and prepayments are
4 excluded from encumbrance, or whether they are secured by a bond which is not included in the
5 pledged collateral, within 30 days of the transaction.

6 IT IS FURTHER ORDERED that AboveNet Communications, Inc. is hereby authorized to
7 engage in any transactions and to execute any documents necessary to effectuate the authorization
8 granted herein.

9 IT IS FURTHER ORDERED that such authority is expressly contingent upon AboveNet
10 Communications, Inc.'s use of the proceeds for the purposes set forth in its application.

11 IT IS FURTHER ORDERED that approval of the financing set forth herein does not
12 constitute or imply approval or disapproval by the Commission of any particular expenditure of the
13 proceeds derived thereby for purposes of establishing just and reasonable rates.

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1 IT IS FURTHER ORDERED that AboveNet Communications, Inc. shall file with the
2 Commission copies of all executed financing documents setting forth the terms of the financing with
3 Docket Control, as a compliance item in this docket, within 90 days of obtaining such financing.

4 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.
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7

8 CHAIRMAN

COMMISSIONER

9
10 COMMISSIONER

COMMISSIONER

COMMISSIONER

11
12 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
13 Director of the Arizona Corporation Commission, have
14 hereunto set my hand and caused the official seal of the
15 Commission to be affixed at the Capitol, in the City of Phoenix,
16 this ____ day of _____, 2007.

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18 BRIAN C. McNEIL
19 EXECUTIVE DIRECTOR

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1 SERVICE LIST FOR:

ABOVENET COMMUNICATIONS, INC.

2 DOCKET NO.:

T-03774A-06-0271

3 Michael W. Patten
4 ROSHKA, DeWULF & PATTEN
5 400 East Van Buren Street, Ste. 800
6 Phoenix, AZ 85004

7 Joan M. Griffin
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12 Jill Sandford
13 ABOVENET, INC.
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15 White Plains, NY 10601

16 Christopher Kempley, Chief Counsel
17 Legal Division
18 ARIZONA CORPORATION COMMISSION
19 1200 West Washington Street
20 Phoenix, AZ 85007

21 Ernest G. Johnson, Director
22 Utilities Division
23 ARIZONA CORPORATION COMMISSION
24 1200 West Washington Street
25 Phoenix, AZ 85007

COMMISSIONERS
JEFF HATCH-MILLER - Chairman
WILLIAM A. MUNDELL
MIKE GLEASON
KRISTIN K. MAYES
BARRY WONG



BRIAN C. MCNEIL
Executive Director

ARIZONA CORPORATION COMMISSION

DATE: October 2, 2006

DOCKET NO.: WS-01303A-06-0283

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Amy Bjelland. The recommendation has been filed in the form of an Order on:

ARIZONA-AMERICAN WATER COMPANY, INC.

(FINANCING)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00 p.m.** on or before:

OCTOBER 11, 2006

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

OCTOBER 17 AND 18, 2006

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.


BRIAN C. McNEIL
EXECUTIVE DIRECTOR

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 JEFF HATCH-MILLER, Chairman
4 WILLIAM A. MUNDELL
5 MIKE GLEASON
6 KRISTIN K. MAYES
7 BARRY WONG

8 IN THE MATTER OF THE APPLICATION OF
9 ARIZONA-AMERICAN WATER COMPANY,
10 INC., AN ARIZONA CORPORATION, FOR
11 AUTHORITY TO INCUR LONG-TERM DEBT
12 THROUGH ITS AFFILIATE, AMERICAN WATER
13 CAPITAL CORPORATION.

DOCKET NO. WS-01303A-06-0283

ORDER

14 Open Meeting
15 October 17 and 18, 2006
16 Phoenix, Arizona

17 **BY THE COMMISSION:**

18 On April 26, 2006, Arizona-American Water Company, Inc. ("Arizona-American") filed with
19 the Arizona Corporation Commission ("Commission") an application for authority to incur long-term
20 debt through its affiliate, American Water Capital Corporation ("American") and for authorization of
21 payment obligations to the City of Tolleson, Arizona.

22 * * * * *

23 Having considered the entire record herein and being fully advised in the premises, the
24 Commission finds, concludes, and orders that:

25 FINDINGS OF FACT

26 1. Arizona-American Water Company, Inc. ("Arizona-American" or "Applicant") is a
27 Class "A" Arizona public service corporation providing water and wastewater services in portions of
28 Mohave, Maricopa and Santa Cruz counties. Arizona-American provides utility service to
approximately 97,000 water customers and 47,000 sewer customers in Arizona.

29 2. Arizona-American currently has three rate cases in progress for the following districts:
30 (1) Mohave Water and Wastewater, Docket No. WS-01303A-06-0014; (2) Anthem Water and
31 Anthem/Agua Fria Wastewater, Docket No. WS-01303A-06-0403; and (3) Sun City Wastewater and
32 Sun City West Wastewater, Docket No. WS-01303A-06-0491.

1 3. On April 26, 2006, Arizona-American filed an application with the Commission
2 requesting permission to incur long-term debt through its affiliate, American Water Capital
3 Corporation ("AWCC"). The Applicant also requested approval of an obligation to the City of
4 Tolleson ("Tolleson"). Arizona-American published notice of its application in this matter on May
5 15, 2006 in the *Mohave Valley Daily News*, on May 18, 2006 in the *Arizona Business Gazeette*, and
6 on May 19, 2006 in the *Nogales International*.

7 4. On September 15, 2006, the Commission's Utilities Division ("Staff") filed a Staff
8 Report recommending approval of this application.

9 5. Arizona-American asks for Commission approval to borrow \$165.45 million from
10 AWCC for the purpose of paying off two promissory notes, totaling \$158.45 million¹, which mature
11 in November 2006, and to fund two new capital projects with \$7.0 million.

12 6. Arizona-American anticipates obtaining a ten-year interest-only loan of \$165.45
13 million from AWCC at an interest rate not to exceed 6.5 percent per annum. All principal is due at
14 maturity. The actual interest rate will be determined by market conditions at the time of the
15 transaction, and there are no expected financing costs or issuance fees. AWCC has no coverage ratio
16 requirements for Arizona-American.

17 7. Arizona-American has also requested Commission approval of an \$8.56 million
18 obligation ("Obligation") to Tolleson. In its application, Arizona-American stated that it is the
19 successor in interest to Sun City Sewer as the purchaser of sewage treatment services from Tolleson
20 under a Sewage Treatment and Transportation Services Agreement ("Services Agreement").
21 Tolleson issued \$8.56 million in bonds to finance the facilities needed to provide service under the
22 Services Agreement. Payments for the bonds, guaranteed by Arizona-American, are made from
23 revenues received under the Services Agreement. The Obligation previously was guaranteed by
24 Citizens Utilities Company ("Citizens") in 1998, however, Arizona-American subsequently acquired
25 the water and wastewater assets and Certificates of Convenience and Necessity held by Citizens in
26 Arizona. The Commission authorized the acquisition in Decision No. 63584 (September 26, 2000).

27 _____
28 ¹ One note is for \$154,948,119 (Dec. No. 64002 (August 30, 2001)), and the other is for \$3.5 million (Dec. No. 63586 (April 14, 2001)).

1 Decision No. 63584 approved the transfer of assets and recognizes in the description of the
2 transaction that Arizona-American would assume liabilities for contracts, but is silent regarding
3 approval of the terms of the transaction. Arizona-American seeks to clarify this uncertainty by
4 obtaining Commission approval in this docket for the Obligation.

5 **Engineering Analysis**

6 8. Staff Engineering reviewed the material costs estimates of the two new capital projects
7 submitted in support of the application, expansion of its Mohave Wastewater Treatment Plant in
8 Mohave County, and its Verrado Wastewater Treatment Plant Phase 2 expansion in Maricopa
9 County.

10 9. Applicant plans to expand its Mohave Wastewater Treatment Plant by 250,000 gallons
11 per day to meet projected demands and required wastewater treatment standards. The Mohave
12 Wastewater Treatment Plant currently has a design capacity of 250,000 gallons per day. The
13 projections of new hookups show the existing plant capacity will be exceeded by early 2008. The
14 expansion project will include a pre-packaged 250,000 gallons per day treatment facility (matching
15 the existing plant), solids handling facility, expanded blower building, sitework, electrical, and
16 foundation, etc. The estimated total project cost is \$2,763,000.

17 10. Applicant plans to expand the Verrado Wastewater Treatment Plant, which has an
18 existing capacity of 450,000 gallons per day. The projected flow will reach the existing capacity in
19 the summer of 2007. The proposed expansion will increase treatment plant capacity from 450,000 to
20 1,160,000 gallons per day, which will meet projected demands until 2011. The estimated total
21 project cost is \$4,910,000.

22 11. Staff concluded that the proposed plant additions are reasonable and the estimated
23 total project costs for the two new capital projects are reasonable. However, no "used and useful"
24 determination of the proposed projects was made and no particular treatment should be inferred for
25 rate making or rate base purposes in the future.

26 **Financial Analysis**

27 12. The Debt Service Coverage ("DSC") ratio represents the number of times internally
28 generated cash will cover required principal and interest payments on long-term debt. A DSC ratio

1 greater than 1.0 means that operating cash flow is sufficient to cover debt obligations. A DSC less
2 than 1.0 means that debt service obligations cannot be met from operations and that another source of
3 funds is needed to avoid default.

4 13. The Times Interest Earned Ratio ("TIER") represents the number of times earnings will
5 cover interest expense on short-term and long-term debt. A TIER greater than 1.0 means that
6 operating income is greater than interest expense. A TIER of less than 1.0 is not sustainable in the
7 long term but does not necessarily mean that debt obligations cannot be met in the short term.

8 14. Cash Coverage Ratio ("CCR") represents the number of times internally generated
9 cash covers required interest payments on short-term and long-term debt. A CCR greater than 1.0
10 means that operating cash flow is greater than interest expense.

11 15. For the year ended December 31, 2005, Staff's financial analysis shows Arizona-
12 American had a 0.52 TIER, a 2.05 DSC and a 2.06 CCR. Staff's pro forma analysis, reflecting the
13 effect of the AWCC debt proposed by Arizona-American assuming a 6.5 percent annual interest rate
14 and 10-year amortization shows a decline to a 0.46 TIER, a 1.81 DSC, and a 1.82 CCR.

15 16. Arizona-American's TIER results reflect that operating income would suffice to cover
16 interest expense in the short-term, but not in the long term. However, DSC results indicate that
17 Arizona-American will be able to meet all obligations with cash generated from operations.
18 Therefore, operating cash flow is sufficient to cover both principal and interest payments on short-
19 and long-term debt obligations.

20 Capital Structure

21 17. At December 31, 2005, Arizona-American's capital structure consisted of 8.5 percent
22 short-term debt, 58.6 percent long-term debt, and 32.9 percent equity. Pro forma analysis reflects a
23 capital structure composed of 8.1 percent short-term debt, 57.7 percent long-term debt and 34.2
24 percent equity.

25 18. On March 21, 2006, Arizona-American received \$35 million in new equity from
26 American Water Works, Inc., its parent company. The effect of this new equity on Arizona-
27 American's equity position was partially offset by a goodwill write-off of \$24.4 million.
28

1 **Staff's Conclusions and Recommendations**

2 19. Based on its review and analysis, Staff concluded that authorization of the \$8.56
3 million Tolleson Obligation is appropriate to clarify any ambiguity regarding Commission
4 authorization. Staff stated its conclusion that the estimated costs associated with the new capital
5 projects appear to be reasonable, and stated that issuance of the proposed AWCC debt financing not
6 to exceed \$7.0 million to fund new capital projects and not to exceed \$158.45 million to pay off
7 maturing debt is within Arizona-American's corporate powers, is compatible with the public interest,
8 is consistent with sound financial practices and will not impair its ability to provide services.

9 20. Staff recommended that the Commission authorize Arizona-American's request to
10 borrow an amount not to exceed \$165.45 million in new funds from AWCC for the purposes
11 described herein. Staff further recommended that the Commission approve Arizona-American's
12 \$8.56 million Tolleson Obligation pertaining to the Services Agreement as successor in interest to
13 Sun City Sewer.

14 21. Staff further recommended authorizing Arizona-American to engage in any
15 transaction and to execute any documents necessary to effectuate the authorizations granted.

16 22. Staff recommended that the executed loan documents be filed with Docket Control
17 within 30 days of this Decision.

18 23. Staff's recommendations are reasonable and should be adopted.

19 **CONCLUSIONS OF LAW**

20 1. Arizona-American is a public service corporation within the meaning of Article XV of
21 the Arizona Constitution and A.R.S. §§ 40-281, 40-282, 40-301 and 302.

22 2. The Commission has jurisdiction over Arizona-American and the subject matter of the
23 application.

24 3. Notice of the application was given in accordance with the law.

25 4. Staff's recommendations are reasonable and should be adopted.

26 5. The financing approved herein is for lawful purposes within Arizona-American's
27 corporate powers, is compatible with the public interest, with sound financial practices, and with the
28 proper performance by Arizona-American of service as a public service corporation, and will not

1 impair Arizona-American's ability to perform that service.

2 6. The financing approved herein is for the purposes stated in the application and is
3 reasonably necessary for those purposes, and such purposes are not, wholly or in part, reasonably
4 chargeable to operating expenses or to income.

5 ORDER

6 IT IS THEREFORE ORDERED Arizona-American Water Company, Inc.'s application for
7 authority to borrow an amount not to exceed \$165.45 million in new funds from American Water
8 Capital Corporation for the purposes described herein shall be, and hereby is, granted.

9 IT IS FURTHER ORDERED that Arizona-American Water Company, Inc.'s application for
10 authorization of its \$8.56 million obligation to the City of Tolleson Obligation pertaining to the
11 Sewage Treatment and Transportation Services Agreement as successor in interest to Sun City Sewer
12 shall be, and hereby is, granted.

13 IT IS FURTHER ORDERED that such authority is expressly contingent upon Arizona-
14 American Water Company, Inc.'s use of the proceeds for the purposes set forth in its application.

15 IT IS FURTHER ORDERED that approval of the financing set forth herein does not
16 constitute or imply approval or disapproval by the Commission of any particular expenditure of the
17 proceeds derived thereby for purposes of establishing just and reasonable rates.

18 IT IS FURTHER ORDERED that Arizona-American Water Company, Inc. is hereby
19 authorized to engage in any transaction and to execute any documents necessary to effectuate the
20 authorizations granted.

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IT IS FURTHER ORDERED that Arizona-American Water Company, Inc. shall file with Docket Control, as a compliance item in this docket, within 30 days of this Decision, a copy of all executed documents associated with the financing authorized herein.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this ____ day of _____, 2006.

BRIAN C. McNEIL
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

1 SERVICE LIST FOR: ARIZONA-AMERICAN WATER COMPANY, INC.

2 DOCKET NO.: WS-01303A-06-0283

3

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6 Christopher Kempley, Chief Counsel
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7 ARIZONA CORPORATION COMMISSION
1200 West Washington Street
8 Phoenix, Arizona 85007

9 Ernest G. Johnson, Director
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10 ARIZONA CORPORATION COMMISSION
1200 West Washington Street
11 Phoenix, Arizona 85007

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COMMISSIONERS
JEFF HATCH-MILLER - Chairman
WILLIAM A. MUNDELL
MIKE GLEASON
KRISTIN K. MAYES
BARRY WONG



BRIAN C. MCNEIL
Executive Director

ARIZONA CORPORATION COMMISSION

DATE: August 29, 2006

DOCKET NOS.: T-03887A-05-0909 and T-20436A-05-0909

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Amy Bjelland. The recommendation has been filed in the form of an Order on:

ALLTEL COMMUNICATIONS, INC. and ALLTEL HOLDINGS CORPORATION
SERVICES, INC. nka WINDSTREAM COMMUNICATIONS, INC.

(CC&N TRANSFER)


Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

SEPTEMBER 7, 2006

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

SEPTEMBER 19 AND 20, 2006

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.


BRIAN C. McNEIL
EXECUTIVE DIRECTOR

1
2 **BEFORE THE ARIZONA CORPORATION COMMISSION**

3 COMMISSIONERS

4 JEFF HATCH-MILLER Chairman
5 WILLIAM A. MUNDELL
6 MIKE GLEASON
7 KRISTIN K. MAYES
8 BARRY WONG

9 IN THE MATTER OF THE JOINT APPLICATION
10 OF ALLTEL COMMUNICATIONS, INC. AND
11 ALLTEL HOLDING CORPORATE SERVICES,
12 INC. FOR APPROVAL OF THE TRANSFER OF
13 THE CERTIFICATE OF CONVENIENCE AND
14 NECESSITY TO PROVIDE RESOLD LONG
15 DISTANCE TELECOMMUNICATIONS
16 SERVICES AND ASSETS TO ALLTEL HOLDING
17 CORPORATE SERVICES, INC., APPROVAL OF
18 TERMINATION OF SERVICE AND LIMITED
19 WAIVER OF THE SLAMMING RULES.

DOCKET NO. T-03887A-05-0909
DOCKET NO. T-20436A-05-0909

DECISION NO. _____

ORDER

13 Open Meeting
14 September 19 and 20, 2006
15 Phoenix, Arizona

16 **BY THE COMMISSION:**

17 Having considered the entire record herein and being fully advised in the premises, the
18 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

19 **FINDINGS OF FACT**

20 1. On December 22, 2005, Alltel Communications, Inc. ("ACI") and Alltel Holdings
21 Corporate Services, Inc., now known as Windstream Communications, Inc.¹ ("Windstream") (jointly,
22 "Applicants") filed an application requesting:

- 23 • Approval of the transfer of ACI's Certificate of Convenience and
24 Necessity ("CC&N") to provide resold long distance service to
25 Windstream;
- 26 • Approval of the transfer of long distance customers from ACI to
27 Windstream;
- 28 • Approval of the termination of resold long distance service by ACI upon
the transfer of the CC&N; and

¹ On June 15, 2006, Applicants filed a supplement to the Application which noted that Alltel Holdings Corporate Services, Inc. had changed its name to Windstream Communications, Inc.

- The granting of a limited waiver of the Commission's Slamming Rules.

2. ACI is a Delaware corporation and a wholly owned subsidiary of Alltel Corporation ("Alltel"). ACI currently holds an Arizona CC&N to provide resold long distance services pursuant to Decision No. 63937 (August 6, 2001).

3. Windstream is a newly formed wholly owned subsidiary of Alltel. Alltel is currently in the process of spinning off its wireline telecommunications business, but intends to retain ACI as its subsidiary; however, Windstream will become a subsidiary of a separate publicly traded holding company.

4. On July 19, 2006, the Commission's Utilities Division ("Staff") filed a Staff Report recommending approval of the Application.

5. Staff stated that ACI indicated that it provided resold long distance service to 3072 residential and 2240 business customers, none of whom receive service under contract. This enables ACI to change the service provider with no early termination penalty. ACI bills in arrears and therefore holds no prepayments.

6. ACI requested that its resold long distance CC&N be transferred to Windstream and that ACI be authorized to discontinue its long distance service in Arizona. Applicants stated that Windstream will provide the same telecommunications services to ACI's customers, that customers will continue to receive their existing telecommunications services at the same rates, terms, and conditions, and that the only change apparent to customers will be in the change of name of the customers' service provider. Applicants stated that from the customers' point of view, the transfer will be transparent and the service will be seamless and uninterrupted. Windstream submitted a proposed tariff under its name that is identical to the current Alltel tariff on file with the Commission.

7. In accordance with A.A.C. R14-2-1107, ACI provided notice to its customers in May and June 2006 via a letter, a sample of which was provided with ACI's application. Unless the notified customers elect to change carriers after receipt of the notice, they will be transferred to Windstream and will continue to receive resold long distance service at the same rates, terms and conditions as they presently receive. ACI stated that all of its customers are on month-to-month service arrangements and can transfer to another long distance carrier upon request.

1 8. Staff noted that ACI holds no deposits or prepayments, and that Windstream will
2 honor any existing ACI prepaid calling cards. Staff further noted that numerous other providers offer
3 long distance service in Arizona.

4 9. The Applicants seek a limited waiver of the Commission's Slamming Rules in
5 connection with the transfer of ACI's Arizona customers to Windstream. ACI and Windstream stated
6 that they will comply with the Federal Communications Commission's ("FCC") slamming rules
7 regarding the transfer of the subscriber base by providing notice to the FCC and to customers. The
8 Applicants seek assurance that each transfer of an ACI customer to Windstream is not an
9 "unauthorized change" under the Arizona Slamming Rules, and noted that limited waivers such as the
10 one requested in this docket were previously granted by the Commission for SBC Telecom, Inc., in
11 Decision No. 67827 (May 5, 2005) and for XO Arizona, Inc., in Decision No. 67460 (January 4,
12 2005).

13 10. The Applicants stated that neither Windstream nor its officers or directors have been
14 or are currently subject to any formal or informal complaint proceedings before any state or federal
15 regulatory agency, and that neither Windstream nor its officers or directors have been or are currently
16 involved in any civil or criminal investigations, or have had judgments entered in any civil matter,
17 judgments levied by any administrative or regulatory agency or been convicted of any criminal acts
18 within the last ten years.

19 11. Windstream does not require deposits or prepayments for its service.

20 12. Windstream does not currently offer resold long distance service in any state and does
21 not have financial statements for the past two years because it is a recently formed entity.
22 Windstream will rely on the financial resources of its parent company, Valor Communications
23 Group. Windstream does not have an Arizona-specific estimate of its projected total revenues and
24 expenses for the first twelve months of operation, nor does it nor will it have any physical assets in
25 Arizona during the first twelve months of operations.

26 **Staff's Recommendations**

27 13. Staff recommended that Windstream be granted a CC&N to provide resold
28 interexchange service. Staff further recommended approval of Windstream's requested waiver of the

Commission's Slamming Rules in this matter. Staff further recommended cancellation of ACI's CC&N to provide telecommunications services in the State of Arizona. Staff further recommended the following:

- (a) Windstream should be ordered to comply with all Commission rules, orders, and other requirements relevant to the provision of intrastate telecommunications service;
- (b) Windstream should be ordered to maintain its accounts and records as required by the Commission;
- (c) Windstream should be ordered to file with the Commission all financial and other reports that the Commission may require, and in a form and at such times as the Commission may designate;
- (d) Windstream should be ordered to maintain on file with the Commission all current tariffs and rates, and any service standards that the Commission may require;
- (e) Windstream should be ordered to comply with the Commission's rules and modify its tariffs to conform to these rules if it is determined that there is a conflict between the Applicant's tariffs and the Commission's rules;
- (f) Windstream should be ordered to cooperate with Commission investigations, including, but not limited to, customer complaints;
- (g) Windstream should be ordered to participate in and contribute to the Arizona Universal Service Fund, as required by the Commission;
- (h) Windstream should be ordered to notify the Commission immediately upon changes to Windstream's name, address or telephone number;
- (i) Windstream should be ordered to immediately certify to the Commission that it does not block access to alternative telecommunications providers by its customers via 101XXXX dialing;
- (j) If at some future date, Windstream wants to collect from its customers an advance, deposit, and/or prepayment, Staff recommends that Windstream be required to file an application with the Commission for Commission approval. Such application must reference the Decision Number in this docket and must explain the applicant's plans for procuring a performance bond;
- (k) Windstream's interexchange service offerings should be classified as competitive pursuant to A.A.C. R14-2-1108;
- (l) The maximum rates for these services should be the maximum rates proposed by Windstream in its proposed tariffs. The minimum rates for the Applicant's

competitive services should be the Applicant's total service long run incremental costs of providing those services as set forth in A.A.C. R14-2-1109;

(m) In the event that Windstream states only one rate in its proposed tariff for a competitive service, the rate stated should be the effective price to be charged for the service as well as the service's maximum rate; and

(n) In the event Windstream requests to discontinue and/or abandon its service area it must provide notice to both the Commission and its customers in accordance with A.A.C. R14-2-1107.

14. Applicant will not collect advances, prepayments or deposits from customers.

15. The rates proposed by this filing are for competitive services.

16. Staff's recommendations as set forth herein are reasonable, and Windstream should file with Docket Control, as a compliance item in this docket, the certification required in Finding of Fact No. 13(i) within 60 days of this Decision.

17. Applicant's fair value rate base is zero.

CONCLUSIONS OF LAW

1. Applicants are public service corporations within the meaning of Article XV of the Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

2. The Commission has jurisdiction over Applicants and the subject matter of the application.

3. Notice of the application was given in accordance with the law.

4. Transfer of ACI's CC&N is in the public interest

5. Windstream's provision of resold interexchange telecommunications services is in the public interest.

6. Windstream is a fit and proper entity to receive a CC&N as conditioned herein for providing competitive resold interexchange telecommunications services in Arizona.

7. Staff's recommendations are reasonable and should be adopted.

8. Windstream's fair value rate base is not useful in determining just and reasonable rates for the competitive services it proposes to provide to Arizona customers.

9. Windstream's rates, as they appear in its proposed tariffs, are just and reasonable and should be approved.

ORDER

IT IS THEREFORE ORDERED that the application of Alltel Communications, Inc. and Windstream Communications, Inc. for approval of the transfer of Alltel Communications, Inc.'s Certificate of Convenience and Necessity to provide resold long distance telecommunications services and assets to Windstream Communications, Inc., shall be, and hereby is, granted, conditioned upon compliance with the requirements set forth in Finding of Fact No. 13, above.

IT IS FURTHER ORDERED that Staff's recommendations set forth in Finding of Fact No. 13 above are hereby adopted.

IT IS FURTHER ORDERED that Windstream Communications, Inc. shall comply with the adopted Staff recommendations as set forth in Finding of Fact No. 13 above.

IT IS FURTHER ORDERED that Windstream Communications, Inc. shall file with Docket Control, as a compliance item in this docket, the certification required in Finding of Fact No. 13(i) within 60 days of this Decision.

IT IS FURTHER ORDERED that Alltel Communications, Inc. shall be, and hereby is, granted a waiver of the Commission's slamming rules, A.A.C. R14-2-1901 *et seq.*, for the purposes of transferring customers to Windstream Communications, Inc. as described in the Application.

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1 IT IS FURTHER ORDERED that Windstream Communications, Inc. shall not require its
2 Arizona customers to pay advances, prepayments or deposits for any of its products or services.

3 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

4 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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6
7 CHAIRMAN

COMMISSIONER

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10 COMMISSIONER

COMMISSIONER

COMMISSIONER

11
12 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
13 Director of the Arizona Corporation Commission, have
14 hereunto set my hand and caused the official seal of the
15 Commission to be affixed at the Capitol, in the City of Phoenix,
16 this ____ day of _____, 2006.

17 _____
18 BRIAN C. McNEIL
19 EXECUTIVE DIRECTOR

20 DISSENT _____

21
22 DISSENT _____

23 AB:mj
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1 SERVICE LIST FOR:

ALLTEL COMMUNICATIONS, INC. AND ALLTEL
HOLDING CORPORATE SERVICES, INC.

2

3 DOCKET NO.:

T-03887A-05-0909 and T-20436A-05-0909

4

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11 Christopher Kempley, Chief Counsel
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15 Phoenix, Arizona 85007

16

17 Ernest G. Johnson, Director
18 Utilities Division
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COMMISSIONERS
JEFF HATCH-MILLER - Chairman
WILLIAM A. MUNDELL
MIKE GLEASON
KRISTIN K. MAYES
BARRY WONG



BRIAN C. MCNEIL
Executive Director

ARIZONA CORPORATION COMMISSION

DATE: August 25, 2006

DOCKET NO.: T-20425A-05-0785

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Amy Bjelland. The recommendation has been filed in the form of an Order on:

AMERIVON LLC

(CC&N/RESELLER)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00 p.m.** on or before:

SEPTEMBER 5, 2006

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

SEPTEMBER 19 AND 20, 2006

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.


BRIAN C. McNEIL
EXECUTIVE DIRECTOR

1
2 **BEFORE THE ARIZONA CORPORATION COMMISSION**

3 COMMISSIONERS

4 JEFF HATCH-MILLER, Chairman
5 WILLIAM A. MUNDELL
6 MIKE GLEASON
7 KRISTIN K. MAYES
8 BARRY WONG

9 IN THE MATTER OF THE APPLICATION OF
10 AMERIVON LLC FOR A CERTIFICATE OF
11 CONVENIENCE AND NECESSITY TO PROVIDE
12 COMPETITIVE RESOLD LONG DISTANCE
13 SERVICES.

DOCKET NO. T-20425A-05-0785

DECISION NO. _____

14 ORDER

15 Open Meeting
16 September 19 and 20, 2006
17 Phoenix, Arizona

18 **BY THE COMMISSION:**

19 Having considered the entire record herein and being fully advised in the premises, the
20 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

21 FINDINGS OF FACT

22 1. On October 26, 2005, AmeriVon LLC ("Applicant" or "AmeriVon") filed with the
23 Commission an application for a Certificate of Convenience and Necessity ("Certificate") to provide
24 resold interexchange telecommunications services within the State of Arizona.

25 2. Applicant is a switchless reseller that purchases telecommunications services from a
26 variety of carriers for resale to its customers.

27 3. In Decision No. 58926 (December 22, 1994), the Commission found that resold
28 telecommunications providers ("resellers") are public service corporations subject to the jurisdiction
of the Commission.

4. Applicant has authority to transact business in the State of Arizona.

5. On March 31, 2006, Applicant filed an Affidavit of Publication indicating compliance
with the Commission's notice requirements.

1 6. On August 8, 2006, the Commission's Utilities Division Staff ("Staff") filed a Staff
2 Report which includes Staff's fair value rate base determination in this matter and recommends
3 approval of the application subject to certain conditions. The Staff Report addressed the overall
4 fitness of Applicant to receive a Certificate and also addressed whether its services should be
5 classified as competitive and whether its initial rates are just and reasonable.

6 7. In its Staff Report, Staff stated that Applicant is a start-up company, funded entirely
7 through the investments of AmeriVon's President and CEO and other private investors. AmeriVon's
8 initial funding exceeds \$6 million in start-up capital. The Applicant provided projected income
9 statement, balance sheet and cash flow statement that anticipates total assets of \$9 million, equity of
10 \$7.5 million and net income of \$1 million by December 31, 2007.

11 8. Applicant's tariff indicates that it does not require deposits from its customers for
12 services. If at some future date, Applicant wants to collect advances, deposits and/or prepayments
13 from its resold interexchange customers, Staff recommended that the Applicant be required to file an
14 application with the Commission for approval. The application must reference the decision in this
15 docket and explain the Applicant's plans for procuring a performance bond.

16 9. In the event that the Applicant experiences financial difficulties, there will be minimal
17 impact to its customers because end users can access other interexchange providers via dial around
18 service or, in the longer term, the customer may desire to permanently switch to another provider.

19 10. Staff stated that based on information obtained from the Applicant, it has determined
20 that Applicant's fair value rate base ("FVRB") is zero and Applicant's FVRB is too small to be useful
21 in a fair value analysis, and is not useful in setting rates. Staff further stated that in general, rates for
22 competitive services are not set according to rate of return regulation, but are heavily influenced by
23 the market. Staff recommended that the Commission not set rates for Applicant based on the fair
24 value of its rate base.

25 11. Staff believes that Applicant has no market power and that the reasonableness of its
26 rates will be evaluated in a market with numerous competitors. In light of the competitive market in
27 which the Applicant will be providing its services, Staff believes that the rates in Applicant's
28 proposed tariffs for its competitive services will be just and reasonable, and recommends that the

1 Commission approve them.

2 12. Commission rules provide pricing flexibility by allowing competitive
3 telecommunication service companies to price their services at or below the maximum rates
4 contained in their tariffs as long as the pricing of those services complies with A.A.C. R14-2-1109.
5 This requires the Applicant to file a tariff for each competitive service that states the maximum rate
6 as well as the effective (actual) price that will be charged for the service. Any changes to the
7 Applicant's effective (actual) price for a service must comply with A.A.C. R14-2-1109, which
8 provides that the minimum rates for the applicant's competitive services must not be below the
9 Applicant's total service long run incremental costs of providing the services. The Applicant's
10 maximum rates should be the maximum rates proposed by the Applicant in its most recent tariffs on
11 file with the Commission. Future changes to the maximum rates must comply with A.A.C. R14-2-
12 1110.

13 13. Staff recommended approval of Applicant's application subject to the following:

14 (a) The Applicant should be ordered to comply with all Commission rules, orders,
15 and other requirements relevant to the provision of intrastate telecommunications
16 service;

17 (b) The Applicant should be ordered to maintain its accounts and records as
18 required by the Commission;

19 (c) The Applicant should be ordered to file with the Commission all financial and
20 other reports that the Commission may require, and in a form and at such times as the
21 Commission may designate;

22 (d) The Applicant should be ordered to maintain on file with the Commission all
23 current tariffs and rates, and any service standards that the Commission may require;

24 (e) The Applicant should be ordered to comply with the Commission's rules and
25 modify its tariffs to conform to these rules if it is determined that there is a conflict
26 between the Applicant's tariffs and the Commission's rules;

27 (f) The Applicant should be ordered to cooperate with Commission investigations,
28 including, but not limited to, customer complaints;

(g) The Applicant should be ordered to participate in and contribute to the Arizona
Universal Service Fund, as required by the Commission;

(h) The Applicant should be ordered to notify the Commission immediately upon

changes to the Applicant's name, address or telephone number;

(i) If at some future date, the Applicant wants to collect from its customers an advance, deposit, and/or prepayment, Staff recommends that the Applicant be required to file such information with the Commission for Commission approval. Such application must reference the Decision Number in this docket and must explain the Applicant's plans for procuring a performance bond;

(j) The Applicant's interexchange service offerings should be classified as competitive pursuant to A.A.C. R14-2-1108;

(k) The maximum rates for these services should be the maximum rates proposed by the Applicant in its proposed tariffs. The minimum rates for the Applicant's competitive services should be the Applicant's total service long run incremental costs of providing those services as set forth in A.A.C. R14-2-1109;

(l) In the event that the Applicant states only one rate in its proposed tariff for a competitive service, the rate stated should be the effective price to be charged for the service as well as the service's maximum rate; and

(m) In the event the Applicant requests to discontinue and/or abandon its service area it must provide notice to both the Commission and its customers in accordance with A.A.C. R14-2-1107.

14. Staff further recommended that Applicant's Certificate should be conditioned upon the Applicant filing conforming tariffs in accordance with this Decision within 365 days from the date of an Order in this matter, or 30 days prior to providing service, whichever comes first.

15. Staff recommended that if the Applicant fails to meet the timeframes outlined in Finding of Fact No. 14, that Applicant's Certificate should become null and void after due process.

16. Applicant will not collect advances, prepayments or deposits from customers.

17. The rates proposed by this filing are for competitive services.

18. Staff's recommendations as set forth herein are reasonable.

19. Applicant's fair value rate base is zero.

CONCLUSIONS OF LAW

1. Applicant is a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

2. The Commission has jurisdiction over Applicant and the subject matter of the application.

3. Notice of the application was given in accordance with the law.

4. Applicant's provision of resold interexchange telecommunications services is in the public interest.

5. Applicant is a fit and proper entity to receive a Certificate as conditioned herein for providing competitive resold interexchange telecommunications services in Arizona.

6. Staff's recommendations are reasonable and should be adopted.

7. Applicant's fair value rate base is not useful in determining just and reasonable rates for the competitive services it proposes to provide to Arizona customers.

8. Applicant's rates, as they appear in its proposed tariffs, are just and reasonable and should be approved.

ORDER

IT IS THEREFORE ORDERED that the application of AmeriVon LLC for a Certificate of Convenience and Necessity for authority to provide competitive resold interexchange telecommunications services, shall be, and hereby is, granted, conditioned upon its compliance with the requirements set forth in Findings of Fact Nos. 13 and 14, above.

IT IS FURTHER ORDERED that Staff's recommendations set forth in Findings of Fact Nos. 13 and 14 above are hereby adopted.

IT IS FURTHER ORDERED that AmeriVon LLC shall comply with the adopted Staff recommendations as set forth in Findings of Fact Nos. 13 and 14 above.

IT IS FURTHER ORDERED that if AmeriVon fails to meet the timeframes outlined in Finding of Fact. No. 14 above that the Certificate conditionally granted herein shall become null and void after due process.

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1 IT IS FURTHER ORDERED that AmeriVon LLC shall not require its Arizona customers to
2 pay advances, prepayments or deposits for any of its products or services.

3 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

4 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.
5
6

7 CHAIRMAN

COMMISSIONER

8
9 COMMISSIONER

COMMISSIONER

COMMISSIONER

10 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
11 Director of the Arizona Corporation Commission, have
12 hereunto set my hand and caused the official seal of the
13 Commission to be affixed at the Capitol, in the City of Phoenix,
14 this ____ day of _____, 2006.

15 BRIAN C. McNEIL
16 EXECUTIVE DIRECTOR

17
18 DISSENT _____

19
20
21 DISSENT _____

22 AB:mj
23
24
25
26
27
28

1 SERVICE LIST FOR: AMERIVON LLC

2 DOCKET NO.: T-20425A-05-0785

3 Jonathan S. Marashlian
4 THE HELEIN LAW GROUP
5 8180 Greensboro Drive, Ste. 700
6 McLean, VA 22102

7 Christopher Kempley, Chief Counsel
8 Legal Division
9 ARIZONA CORPORATION COMMISSION
10 1200 West Washington Street
11 Phoenix, Arizona 85007

12 Ernest G. Johnson, Director
13 Utilities Division
14 ARIZONA CORPORATION COMMISSION
15 1200 West Washington Street
16 Phoenix, Arizona 85007

17

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COMMISSIONERS
JEFF HATCH-MILLER - Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES



BRIAN C. McNEIL
Executive Director

ARIZONA CORPORATION COMMISSION

DATE: JULY 7, 2006

DOCKET NO: WS-01303A-05-0170

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Amy Bjelland. The recommendation has been filed in the form of an Opinion and Order on:

**ARIZONA-AMERICAN WATER COMPANY
(AGREEMENT)**

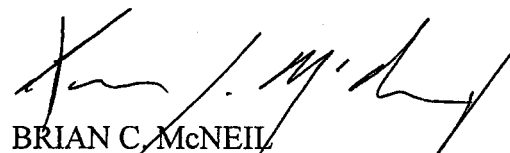
Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

JULY 17, 2006

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

JULY 25, 2006 and JULY 26, 2006

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Secretary's Office at (602) 542-3931.


BRIAN C. McNEIL
EXECUTIVE DIRECTOR

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 JEFF HATCH-MILLER, Chairman
4 WILLIAM A. MUNDELL
5 MARC SPITZER
6 MIKE GLEASON
7 KRISTIN K. MAYES

8 IN THE MATTER OF THE APPLICATION OF
ARIZONA-AMERICAN WATER COMPANY FOR
AN AFFILIATE AGREEMENT WITH
AMERICAN WATER RESOURCES, INC.

DOCKET NO. WS-01303A-05-0170

DECISION NO. _____

OPINION AND ORDER

9 DATE OF HEARING:

August 10, 2005

10 PLACE OF HEARING:

Phoenix, Arizona

11 ADMINISTRATIVE LAW JUDGE:

Dwight D. Nodes¹

12 APPEARANCES:

Mr. Craig A. Marks, on behalf of Applicant; and

13 Mr. Timothy J. Sabo, Staff Attorney, Legal
14 Division, on behalf of the Utilities Division of
the Arizona Corporation Commission.

15 **BY THE COMMISSION:**

16 On March 9, 2005, Arizona-American Water Company ("Arizona-American") filed with the
17 Arizona Corporation Commission ("Commission") an Agreement For Support Services Between
18 American Water Resources, Inc. ("AWR") and Arizona-American.

19 On June 9, 2005, Arizona-American and the Commission's Utilities Division ("Staff") filed a
20 Stipulation setting forth a proposed procedural schedule.

21 On June 10, 2005, a procedural order was issued setting the matter for hearing on August 10,
22 2005 and establishing a procedural schedule.

23 On June 14, 2005, Arizona-American and Staff filed a Stipulation requesting that the
24 procedural schedule established by the June 10, 2005 procedural order be changed.

25 On June 17, 2005, a procedural order was issued with the requested changes to the schedule
26

27 _____
28 ¹ Administrative Law Judge Dwight Nodes conducted the hearing in this matter. Administrative Law Judge Amy Bjelland drafted the Recommended Opinion and Order.

1 and retaining the original hearing date.

2 On June 24, 2005, Staff filed its Notice of Filing the Direct Testimony of Linda A. Jaress.

3 On July 22, 2005, Arizona-American filed the Joint Direct Testimony of Clifford C. Groh and
4 Brian K. Biesemeyer.

5 On August 5, 2005, Staff filed its Notice of Filing the Rebuttal Testimony of Linda A. Jaress.

6 On August 10, 2005, the hearing was held as scheduled before a duly authorized
7 Administrative Law Judge of the Commission. Both parties were represented by counsel. The matter
8 was taken under advisement pending submission of late-filed exhibits and closing briefs.

9 On September 9, 2005, Arizona-American filed two late-filed exhibits.

10 On September 23, 2005, Arizona-American and Staff filed simultaneous Closing Briefs.

11 * * * * *

12 Having considered the entire record herein and being fully advised in the premises, the
13 Commission finds, concludes, and orders that:

14 **FINDINGS OF FACT**

15 1. Arizona-American provides water and/or sewer service to over 121,000 customers in
16 Arizona. Arizona-American and AWR are both subsidiaries of American Water Works Company,
17 whose ultimate parent is RWE AG, a company organized under the laws of the Federal Republic of
18 Germany. The merger of Arizona-American's parent company, American Water Works Company,
19 Inc., with a subsidiary of RWE was approved by Decision No. 65453 (December 12, 2002) ("RWE
20 Acquisition Order").

21 2. Arizona-American wishes to enter into an affiliate agreement with AWR to provide
22 programs wherein Arizona-American customers would be given the opportunity to subscribe with
23 AWR for water and sewer line insurance programs. AWR has similar water and sewer line
24 insurance programs in eleven other states. The program is similar to Qwest Corporation's Linebacker
25 program, except that AWR, Arizona-American's unregulated affiliate, would administer the program.

26 3. Linda Jaress, Executive Consultant III for the Commission's Utilities Division, stated
27 that Staff does not believe that Arizona-American has shown that the Agreement is in the public
28 interest and therefore Staff recommended rejection of the Agreement; however, in the event the

1 agreement is accepted by the Commission, Staff recommended various conditions attendant thereto.
2 Arizona-American maintains that the Agreement is in the public interest, and is willing to accept
3 several of Staff's recommendations in the event the Agreement is approved.

4 **The Proposed Protection Programs**

5 4. Water and sewer line customers own the service lines on their property. In the case of
6 a water line, the customer owns the line from the water meter to the shut-off valve outside the house;
7 in the case of a sewer line, the customer owns the line from the property line to the house. The
8 customer is responsible for correcting problems arising with those areas of the line(s), whether caused
9 by tree-root incursions, seasonal soil subsidence, aging, or other normal wear and tear.

10 5. AWR's Water Line Protection Program and Sewer Line Protection Program
11 (collectively, the "Programs") are for residential customers who wish to purchase insurance against
12 leaks and breaks in the water or sewer lines that belong to the customer. For an annual fee, AWR
13 would provide for the repair of the line(s), including obtaining permitting, site restoration, and
14 provision of independent licensed contractors². The annual fee for the Water Line Protection
15 Program would be \$60 to cover the cost of repair for damage resulting from "normal wear and tear"
16 up to \$4,000 per occurrence. The annual fee for the Sewer Line Protection Program would be \$109
17 to cover the cost of repair for damage, again from "normal wear and tear," as well as for clog
18 removal, up to \$4,000 per occurrence, subject to a \$50 fee for service each time an independent
19 contractor is dispatched to the customer's home.

20 6. Under the terms of the proposed Agreement, Arizona-American would distribute
21 AWR informational and promotional materials, and from time to time, customer satisfaction surveys
22 regarding the Programs, to Arizona-American customers. AWR would be responsible for all
23 associated costs. The Agreement provides for repair service coordination by allowing an Arizona-
24 American employee who becomes aware of damage to a customer's line(s), and knows that the
25 customer is enrolled in the applicable Program, to notify AWR. Billing for either or both Programs
26 would be done via the customer's water or sewer bill issued by Arizona-American, which would then
27

28 ² No Arizona-American or AWR employees would make service line repairs.

1 forward the funds to AWR.

2 **Compensation for Services and Other Alternative Staff Recommendations**

3 7. The fee to be paid Arizona-American by AWR for services rendered pursuant to the
4 Agreement would be the greater of 115 percent of fully distributed costs incurred by Arizona-
5 American in providing the services, or the market price for the services if one is ascertainable.
6 However, the Agreement provides that billing and collection services would be \$0.10 per customer
7 per monthly billing.

8 8. If the Commission rejects Staff's primary recommendation to deny the application in
9 its entirety, Staff recommends that the Agreement be modified to indicate that Arizona-American
10 should be compensated for its services, including billing and collection services, at 115 percent of
11 fully allocated costs or prevailing market prices, whichever is higher, and that in its next rate case,
12 Arizona-American should provide information and workpapers showing the calculation of the market
13 price and fully allocated costs. Staff observed that the companies' objection does not appear to be
14 due to unsoundness of the recommendation, but rather because they believe it to be impractical.

15 9. Arizona-American argued that the \$0.10 amount should be approved, as it would be a
16 windfall to Arizona-American because the actual cost to provide the service is negligible and consists
17 only of providing an additional line to reflect the monthly fee for the Programs onto the customer's
18 monthly water or sewer bill.

19 10. Mr. Groh testified that:

20
21 [t]he 10-cent per bill amount was developed in the Fall of 2001 via
22 negotiations between AWR and its affiliate New Jersey American Water
23 Company (NJAM) to enter into an Agreement for Support Services for the
24 Programs. At that time, NJAM determined that its cost for imprinting on a
customer's water bill a single line item charge for the Program and a
separate line item charge for applicable New Jersey state sales tax would
be pennies per month.³

25 Also, during the testimony of Mr. Brian K. Biesemeyer, Arizona-American's Network General
26 Manager, the \$0.10 charge was characterized as financial "gravy"⁴ for Arizona-American.

27
28 ³ Tr. at 51.

⁴ *Id.* at 54.

1 **Potential Customer Confusion and Costs**

2 11. Staff concluded that the promotional materials initially provided by Arizona-
3 American, which are in use in New Jersey, where AWR offers the Programs, could lead to customer
4 confusion.

5 12. The Commission previously addressed the shared use of utility names and logos with
6 competitive affiliates in Decision No. 62416 (April 3, 2000), wherein the Commission approved
7 Arizona Public Service's ("APS") Code of Conduct for use in competitive activities. The Code of
8 Conduct prohibited the shared use of the APS name and logo by its competitive affiliates. The
9 Commission approved similar language for Tucson Electric Power in Decision No. 62767 (August 2,
10 2000).

11 13. With respect to the Programs proposed in this proceeding, Staff expressed its concern
12 that "the language of the promotional materials, as in most advertisement, is given to hyperbole and
13 written to stir the emotions."⁵

14 14. Staff also stated that, if approved, the Programs would affect the Commission and
15 Commission Staff because the Commission's name, address and telephone number appears on all of
16 Arizona-American's bills, wherein charges for the Programs would appear. The Commission's
17 Consumer Services Section currently receives calls and complaints regarding disputes over the
18 Linebacker program offered by Qwest Corporation, which is somewhat similar to the Programs.
19 Therefore, Staff expects an increase in the number of calls taken by Commission Staff; however, the
20 Commission's Compliance Division Staff would be unable to assist in resolving complaints regarding
21 the unregulated affiliate's activities. Further, if the Programs and Agreements are approved subject
22 to certain conditions, the Commission's Compliance Section will also be involved.

23 15. Staff stated that Arizona-American's rate cases would also be complicated by the
24 addition of the Programs and could result in higher rate case expenses, which are recovered through
25 rates to customers. Staff noted that Arizona-American's typical rate case expenses are significant and
26 cited Decision No. 67093 (June 30, 2004), wherein the Commission approved recovery of \$418,941
27

28 ⁵ Direct Testimony of Linda Jaress, p. 16.

1 of rate case expenses.

2 **Potential Customer Benefits**

3 16. Staff stated that the primary beneficiary of the Programs would be the unregulated
4 affiliate, AWR, which stands to reap substantial profit. However, Staff conceded that Arizona-
5 American's rate payers could benefit from successful Programs if the price for all the services
6 Arizona-American provides to AWR is set at a level equal to Arizona-American's fully allocated cost
7 plus 15 percent, or market, whichever is higher, and if the net income from those services is included
8 above-the-line for ratemaking purposes, the Programs could result in a lower revenue requirement in
9 Arizona-American's next rate case, which translates into lower rates for customers. Additionally, for
10 customers who enroll in the Programs who have a coverable claim for water or sewer line leaks or
11 breaks, the Programs could be worthwhile.

12 17. Mr. Biesemeyer testified at hearing that there is a great benefit to the consumer that
13 has a coverable claim in that Arizona-American would refer that customer immediately to AWR,
14 which would then immediately arrange for the necessary repairs.⁶ Mr. Biesemeyer testified that
15 Arizona-American does not give referrals to plumbers or contractors to its customers, so customers
16 without Program subscriptions would have to engage a plumber or contractor on their own.⁷

17 **Profitability**

18 18. Arizona-American provided confidential responses to Staff regarding profitability
19 under the Programs for Arizona-American. Mr. Clifford C. Groh, Director of Business Development
20 and Operations for AWR, testified under seal to confidential information regarding profitability under
21 the Programs for AWR. Arizona-American expects a low level of net income from providing
22 services to AWR as specified in the Agreement; AWR expects to reap substantial revenue by the
23 fourth year of the Programs.

24 19. From the confidential information provided, Staff gave a range of estimates of
25 revenues that could be generated by the Programs. If five percent of Arizona-American's 121,000
26 customers enroll in both Programs, AWR's revenues would be approximately \$1.0 million. If 20

27 _____
28 ⁶ Tr. at 55 and 56.

⁷ *Id.*

1 percent enroll, revenues for AWR would be over approximately \$4.0 million.

2 20. At hearing, Mr. Groh suggested that AWR would be willing to share 50 percent of its
3 profits with Arizona-American only if Arizona-American were also willing to take 50 percent of the
4 risk or losses associated with the Programs.⁸ Mr. Groh testified that AWR “would consider [sharing
5 profit with Arizona-American] but I think it would need to be balanced also with the willingness of
6 Arizona-American Water to share the losses as well if any.”⁹

7 **Privacy Concerns**

8 21. During the discovery process, Staff requested that both Arizona-American and AWR
9 provide their policies with regard to the dissemination of customer-specific information such as
10 name, address, telephone number, usage, bill payment history, etc. Arizona-American does not have
11 a written policy, but informed Staff that “[e]xcept in response to a request from a police agency or to
12 a subpoena, the company never provides usage or bill payment history to any party.” Customer
13 names, addresses, and telephone numbers would be shared with AWR or with any non-affiliate
14 offering services similar to AWR’s Programs.

15 22. AWR informed Staff that while it does not share customer-specific information with
16 non-affiliated companies, it does share such information with an external marketing agency that helps
17 AWR “develop promotional materials, conduct marketing campaigns and provide analyses of
18 campaign results.” AWR stated that it uses a formal agreement with its external marketing agency to
19 maintain the confidentiality of this customer-specific information; however, AWR did not provide the
20 agreement it currently uses because it is in the process of negotiating a new marketing agreement.
21 Based on the new, unsigned agreement that was provided to Staff by AWR, Staff concluded that
22 although one section purports to protect against the distribution of customer-specific information, the
23 last phrase of the section reads “...unless otherwise specifically authorized in writing by the
24 Company”, indicating to Staff that currently there is no agreement between AWR and its marketing
25 agency(ies) that protects customer-specific information of Arizona-American’s customers.
26 Therefore, Staff recommended that the Commission condition any approval of the Agreement upon

27 _____
28 ⁸ Tr. at 44.

⁹ *Id.* at 45.

1 the filing of a signed contract between AWR and its marketing agency that prohibits the
2 dissemination of the customer-specific information that AWR receives from Arizona-American.

3 23. Staff further recommended that the Commission require Arizona-American, before
4 disseminating customer-specific information to an affiliate or non-affiliate, to inform the customer
5 regarding what information would be released and for what purpose. The customer must
6 affirmatively respond before such information is disseminated. Non-response by the customer should
7 not be considered consent. This requirement should not apply to requests from police agencies or
8 subpoenas.

9 **Action in Other Jurisdictions**

10 24. Staff stated that its research indicates that similar programs are common in other
11 states, especially in the northeast where freezing temperatures may reduce the life of a service line.
12 Staff provided examples of similar programs and their costs, which ranged from \$1.99 per month to
13 \$210 per year.

14 25. AWR indicated that it provides similar Programs in 11 other states. Only four states,
15 Pennsylvania, Virginia, West Virginia, and Illinois required approval for the affiliated utility to
16 institute the Programs through an affiliate agreement. Although Pennsylvania and Virginia approved
17 the applications for provision of water and sewer line insurance programs by AWR, Virginia required
18 removal of and changes to contract language that related to pricing and to commission approval of
19 future changes in the Programs or contract. Virginia also limited the approval to five years.

20 26. The West Virginia Public Service Commission Staff presented testimony expressing
21 its concerns over the cost allocations included in the agreement. West Virginia-American eventually
22 withdrew its application after testimony was filed and a hearing was held.

23 27. The Illinois Commission denied the application based upon "...the open ended nature
24 of the amended affiliate agreement...[and] the absence of any substantive evidence demonstrating
25 that the [Program] is properly priced or is even legitimately necessary"¹⁰.

26 28. Although AWR was ultimately able to institute the Programs in Illinois and West
27

28 ¹⁰ Illinois Order Docket No. 02-0101 (September 16, 2003).

1 Virginia, the Programs were implemented without the assistance of the affiliated utilities.

2 **Affiliated Interest Rules Issue Raised by Staff**

3 29. The Commission's Affiliated Interests rules, R14-2-801 *et seq.*, apply to all Class A
4 investor-owned utilities under the jurisdiction of the Commission. Arizona-American is a Class A
5 investor-owned utility. Under the rules, a utility such as Arizona-American is prohibited from
6 conducting business with an affiliate unless the affiliate agrees to provide the Commission access to
7 its records for the purposes of auditing or investigating transactions between the utility and affiliate.

8 30. During the course of its investigation in this matter, Staff indicated that pursuant to the
9 Affiliated Interests rules, RWE AG is both a public utility holding company and an affiliate of
10 Arizona-American, and therefore must file a notice with the Commission when it intends to perform
11 a reorganization.¹¹

12 31. Staff stated that because neither RWE nor Arizona-American has ever filed for any
13 form of waiver from the Affiliated Interests Rules other than the requested waiver from the Rules
14 when RWE acquired American Water Works, Arizona-American should file for an appropriate
15 waiver from the Rules to clarify the type of transaction for which its parent, American Water, and its
16 ultimate parent, RWE, would need to file notice with this Commission of organizations and
17 reorganizations of the public utility holding company. Ms. Jaress testified at hearing that:

18 RWE is a public utility holding company and it's been making
19 transactions, mergers, divestitures without filing for approval or waivers.
20 I thought it would be appropriate if not necessary for the company to file,
21 make some kind of filing that would clear up any transactions that may
have required approval or notice that weren't approved or explain why
they didn't require notice or approval.¹²

22 When asked whether "every time RWE acquires a new affiliate or divests an affiliate that it should
23 come to the Commission for some sort of a waiver of the rules?",¹³ Ms. Jaress replied, "I'm
24 suggesting that the Commission should make that decision whether or not any or all of those
25

26 ¹¹ Pursuant to A.A.C. R14-2-801, reorganization is the "acquisition or divestiture of a financial interest in an affiliate or a
27 utility, or reconfiguration of an existing affiliate or utility's position in the corporate structure or the merger of
consolidation of an affiliate or a utility."

28 ¹² *Id.* at 120.

¹³ *Id.* at 121.

1 transactions need approval.”¹⁴

2 32. Arizona-American and AWR stated in their response to the direct testimony of Ms.
3 Jaress that they object to this recommendation because they do not understand its necessity. Arizona-
4 American further argued that such a filing would not be necessary in this docket, nor would it be
5 appropriate for the Commission to impose such a requirement where Staff did not specifically
6 identify activities of specific affiliates that would require such a waiver.

7 33. We agree with Staff that the Commission must make the decision whether any or all of
8 the transactions of RWE need approval. The obligation is upon the regulated entity to ensure
9 compliance with all Commission rules, and therefore we will order Arizona-American to either
10 request a waiver of the rules with regard to the various transactions that give rise to an affiliated-
11 interests issue, or to seek approval.

12 **Discussion and Conclusion**

13 34. Although the proposed Programs may allow Arizona-American’s customers to
14 ultimately realize some minimal benefits through revenues derived from the company’s unregulated
15 affiliate, we believe the potential costs outweigh any such speculative benefits. Even if additional
16 qualifying language were to be included on customer bills explaining the distinction between
17 Arizona-American and AWR, the fact that customers would be billed for the insurance services on
18 utility bills would undoubtedly lead to customer confusion regarding the provider of the services, and
19 customers could believe that such services are regulated by the Commission. Moreover, Staff cited to
20 the additional costs that are likely to be incurred by the Commission due to calls and complaints
21 received by the Consumer Services Section related to the proposed Programs. Of further concern is
22 the fact that Consumer Services Staff would be unable to resolve complaints regarding the
23 unregulated affiliate’s activities.

24 35. In addition, the limited revenues that would be received by Arizona-American through
25 the Programs, and thus the ultimate benefit accruing to ratepayers, would in all probability be offset
26 by the additional time and expenditure of Staff resources associated with auditing the Programs’
27

28 ¹⁴ *Id.*

1 expenses and revenues, as well as the additional rate case expenses incurred by the company to
2 support the reasonableness of the Programs costs. Thus, after considering all aspects of Arizona-
3 American's proposal, we conclude that the Programs as proposed are not in the public interest and the
4 application should therefore be denied.

5 36. In denying the application, we wish to make clear that AWR, as an affiliate
6 unregulated by the Commission, is free to undertake selling its Programs pursuant to all applicable
7 insurance laws and regulations governing such activities. However, AWR may not use Arizona-
8 American's name and resources in marketing or promoting its Programs. As pointed out above,
9 AWR implemented its insurance products in Illinois and West Virginia without the assistance of the
10 regulated utility companies in those states, and it may decide to operate in a similar manner in
11 Arizona.

12 CONCLUSIONS OF LAW

13 1. Arizona-American is a public service corporation within the meaning of Article XV of
14 the Arizona Constitution and A.R.S. §40-281 *et seq.*

15 2. The Commission has jurisdiction over Arizona-American and the subject matter of the
16 docket.

17 3. Staff's recommendation to deny the application is reasonable and should be adopted.

18 4. Staff's recommendation to require Arizona-American to file either for an appropriate
19 waiver from the Rules, or approval of appropriate transaction(s), is reasonable and should be adopted.

20 ORDER

21 IT IS THEREFORE ORDERED that the application of Arizona-American Water Company
22 for an affiliate agreement with American Water Resources, Inc., shall be, and hereby is, denied.

23 ...

24 ...

25 ...

26 ...

27 ...

28 ...

IT IS FURTHER ORDERED that Arizona-American Water Company shall file either for an appropriate waiver from the Rules to clarify the type of transaction for which its parent, American Water Resources, Inc., and its ultimate parent, RWE AG, must file notice with this Commission or for approval of appropriate transaction(s).

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this ____ day of _____, 2006.

BRIAN C. McNEIL
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

1 SERVICE LIST FOR: ARIZONA-AMERICAN WATER COMPANY

2 DOCKET NO.: W-01303A-05-0170

3 Craig A. Marks
4 Corporate Counsel
5 Arizona-American Water Company
6 19820 N. 7th Street, Ste. 201
7 Phoenix, AZ 85024

8 Christopher Kempley, Chief Counsel
9 Legal Division
10 ARIZONA CORPORATION COMMISSION
11 1200 West Washington Street
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13 Ernest G. Johnson, Director
14 Utilities Division
15 ARIZONA CORPORATION COMMISSION
16 1200 West Washington
17 Phoenix, AZ 85007

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COMMISSIONERS
JEFF HATCH-MILLER - Chairman
WILLIAM A. MUNDELL
MIKE GLEASON
KRISTIN K. MAYES
BARRY WONG



BRIAN C. MCNEIL
Executive Director

ARIZONA CORPORATION COMMISSION

DATE: August 4, 2006

DOCKET NO.: W-01445A-06-0278

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Amy Bjelland. The recommendation has been filed in the form of an Order on:

ARIZONA WATER COMPANY

(FINANCING)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00 p.m.** on or before:

AUGUST 14, 2006

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

AUGUST 22 AND 23, 2006

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.


BRIAN C. McNEIL
EXECUTIVE DIRECTOR

1
2 **BEFORE THE ARIZONA CORPORATION COMMISSION**

3 COMMISSIONERS

4 JEFF HATCH-MILLER Chairman
5 WILLIAM A. MUNDELL
6 MIKE GLEASON
7 KRISTIN K. MAYES
8 BARRY WONG

9 IN THE MATTER OF THE APPLICATION OF
10 ARIZONA WATER COMPANY FOR AN ORDER
11 AUTHORIZING THE EXECUTION OF A NEW
12 LOAN AGREEMENT OR AMENDMENT TO AN
13 EXISTING LOAN AGREEMENT AND THE
14 DELIVERY OF A PROMISSORY NOTE.

DOCKET NO. W-01445A-06-0278

DECISION NO. _____

15 ORDER

16 Open Meeting
17 August 22 and 23, 2006
18 Phoenix, Arizona

19 **BY THE COMMISSION:**

20 Having considered the entire record herein and being fully advised in the premises, the
21 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

22 FINDINGS OF FACT

23 1. Arizona Water Company ("AWC" or "Company") is an Arizona Corporation that
24 owns and operates water systems providing water service to approximately 73,000 customers located
25 in Cochise, Coconino, Gila, Maricopa, Navajo, Pima, Pinal and Yavapai Counties in Arizona,
26 pursuant to authority granted by the Commission.

27 2. AWC is a wholly owned subsidiary of Utility Investment Company, which is a wholly
28 owned subsidiary of United Resources, Inc.

3. AWC charges rates approved in Decision Nos. 58120 (December 23, 1992) (Western
Group), 64282 (December 28, 2001) (Northern Group), and 66849 (March 19, 2004) (Eastern
Group).

4. On April 26, 2006, AWC filed an application with the Commission requesting
permission to increase its authority to borrow under line of credit instruments from \$21,000,000 to

1 \$28,000,000, and to extend the authorized borrowing period from May 31, 2006, to June 1, 2007.
2 AWC published notice of its application in this matter on May 2, 2006 in Tucson, Arizona, and May
3 3, 2006, in Phoenix, Arizona.

4 5. On July 13, 2006, the Commission's Utilities Division ("Staff") filed a Staff Report
5 recommending approval of this application.

6 6. AWC established a \$9.0 million line of credit with Bank of America Arizona ("Bank
7 of America" or "Bank") in 1997, which was approved in Decision No. 60272 (July 2, 1997).
8 Decision No. 64996 (June 26, 2002) approved a loan to replace the 1997 loan agreement with a credit
9 line of \$11.5 million ("2002 Loan Agreement"). Decision No. 66104 (July 25, 2003) approved the
10 First Amendment to the 2002 Loan Agreement to increase the line of credit to \$15.0 million ("First
11 Amendment"). The First Amendment to the 2002 Loan Agreement expired on June 1, 2004. In
12 Decision No. 67274 (October 5, 2004), the Commission authorized the Second Amendment to the
13 2002 Loan Agreement ("Second Amendment"), which extended AWC's ability to draw on the
14 \$15,000,000 line of credit through August 1, 2005. On September 9, 2005, Decision No. 68118,
15 extended the expiration date to May 31, 2006, and increased the amount to \$21,000,000. On May 5,
16 2006, Decision No. 68694, authorized the issuance of \$25,000,000 of debt to repay existing advances
17 under its Line of Credit, retire its existing Series I bonds in the amount of \$400,000 and to fund or
18 reimburse monies already expended for various capital projects.

19 7. Staff stated that AWC is concerned that there will be additional delays in its ability to
20 issue its long-term bonds under Decision No. 68694, and that it will not be able to cover its working
21 capital and capital requirements. With this request, Staff stated that AWC wishes to finance future
22 construction including arsenic treatment facilities; expanded water facilities; maintenance of reliable
23 water service to its customers; and reimbursement of monies actually expended from AWC's treasury
24 for capital improvement to improve its working capital position. AWC anticipates repaying the
25 principal amounts owed through issuance of long term bonds at a later time.

26 8. AWC wishes to obtain Commission approval for authority to extend its existing line
27 of credit with Bank of America to an amount not to exceed \$28.0 million and to extend the time
28

1 period from June 1, 2006 to June 1, 2007.

2 9. Staff stated that under the terms of the proposed \$28.0 million line of credit through
3 June 1, 2007, all advances will bear interest during each calendar month under one of three rates
4 depending on the timing and amount of the draws. Staff stated that AWC may choose between one
5 of three options: 1) the Bank's reference rate minus 0.25 percentage points; 2) a fixed rate to be
6 determined by the Bank; or 3) an interest rate computed using a formula based on the London
7 Interbank Offered Rate ("LIBOR")¹.

8 10. Staff stated that as of June 2, 2006, the rates under the three options were as follows:

9
10 Option 1: Reference Rate less 0.25%: 7.75

11 Option 2: Fixed rate on amounts not less than \$500,000 for periods of 30, 60, 90, 120,
12 150 and 180 days:

- 13 a. 30 days = 6.15 percent
14 b. 60 days = 6.22 percent
15 c. 90 days = 6.29 percent
16 d. 120 days = 6.32 percent
17 e. 150 days = 6.36 percent
18 f. 180 days = 6.39 percent

19 Option 3: LIBOR formula rate on amounts not less than \$500,000 for periods of 30,
20 60, 90, 120, 150 and 180 days:

- 21 a. 30 days: $5.13750 + 1.0 = 6.13750$ percent
22 b. 60 days: $5.21000 + 1.0 = 6.21000$ percent
23 c. 90 days: $5.27000 + 1.0 = 6.27000$ percent
24 d. 120 days: $5.31000 + 1.0 = 6.31000$ percent
25 e. 150 days: $5.35000 + 1.0 = 6.35000$ percent
26 f. 180 days: $5.38000 + 1.0 = 6.38000$ percent

27 11. Staff Engineering reviewed the Company's construction budget for the year 2006, and
28 stated that without making any "used and useful" determination from which any conclusions should
be inferred for ratemaking or rate base purposes, Staff found the estimated project costs provided by
the Company to be reasonable and appropriate.

12. Staff performed an analysis of AWC's audited financial statements for the twelve-

¹ Staff explained that the formula is the LIBOR divided by the sum of 1.00 minus the Reserve Percentage, and that components of the formula are defined and discussed in detail in the 2002 Loan Agreement.

1 month period ended December 31, 2005. Staff stated that this application seeks to increase the line of
2 credit capacity from \$21,000,000 most recently authorized, of which \$9,850,000 was outstanding as
3 of December 31, 2005. The newly requested debt authorization represents a total potential increase
4 of \$18,150,000, of which AWC plans to use \$14,500,000 for its 2006 Construction Budget, leaving
5 \$3,650,000 available for working capital.

6 13. Staff evaluated AWC's current assets and liabilities to calculate the working capital
7 for the years ended December 31, 2004 and December 31, 2005. Staff stated that its analysis showed
8 that working capital declined by \$3,816 million in 2005. Staff noted that its analysis shows that the
9 \$3.65 million provision for working capital replenishment requested by AWC is less than the actual
10 \$3.85 million decline in working capital.

11 14. Because AWC indicated that it wishes to replenish past monies spent on capital
12 expenditures, Staff also evaluated the change in AWC's plant balances in 2005. Staff stated that its
13 analysis showed that Plant and Construction Work in Progress ("CWIP") combined increased by
14 \$34.3 million, from \$227.4 million to \$261.7 million, during calendar year 2005. Staff noted that,
15 recognizing that \$9,85 million in short term debt was available to finance the increase in Plant and
16 CWIP, AWC provided in excess of \$24 million from other sources. Staff stated that its analysis
17 supports AWC's assertion that a portion of the requested increase to its authorized line of credit is for
18 the purpose of replenishing its own funds already spent on capital improvements. Staff concluded
19 that AWC has properly represented its intended use of the requested line of credit.

20 15. The Debt Service Coverage ("DSC") ratio represents the number of times internally
21 generated cash will cover required principal and interest payments on long-term debt. A DSC ratio
22 greater than 1.0 means that operating cash flow is sufficient to cover debt obligations. A DSC less
23 than 1.0 means that debt service obligations cannot be met from operations and that another source of
24 funds is needed to avoid default.

25 16. The Times Interest Earned Ratio ("TIER") represents the number of times earnings will
26 cover interest expense on short-term and long-term debt. A TIER greater than 1.0 means that
27
28

1 operating income is greater than interest expense. A TIER of less than 1.0 is not sustainable in the
2 long term but does not necessarily mean that debt obligations cannot be met in the short term.

3 17. Staff provided analysis of AWC's actual financial information for the 12 months
4 ending December 31, 2005, which shows AWC's TIER as 5.39 and its DSC as 6.77

5 18. Staff's analysis of AWC's pro forma impact of issuing the approved but not yet issued
6 bonds in the amount of \$25 million and using the proceeds to prepay \$6,000,000 of bonds not due
7 until March 31, 2015 and the \$9.85 million of line of credit outstanding on December 31, 2005 shows
8 AWC's TIER as 2.34 and its DSC as 3.25. With an additional \$7,000,000 draw represented by the
9 requested increase from \$21.0 million to \$28.0 million, the resulting TIER would be 2.08 and the
10 DSC would be 2.93.

11 19. Staff stated that the pro forma TIER and DSC ratios for all existing, authorized and
12 requested obligations demonstrate that AWC has adequate cash flow for each scenario.

13 20. Based on its review and analysis, Staff concluded that the proposed financing is for
14 lawful purposes, within AWC's powers as a corporation, compatible with the public interest,
15 consistent with sound financial practices and will not impair its ability to provide public service.
16 Staff recommended approval of the Company's application for authorization to enter into a loan
17 agreement with Bank of America Arizona for a line of credit through June 1, 2007, not to exceed
18 \$28.0 million, at an interest rate not to exceed the Bank's reference rate minus 0.25 percentage
19 points. Staff further recommended authorizing AWC to engage in any transaction and to execute any
20 documents necessary to effectuate the authorizations granted.

21 21. Staff recommended that one copy of executed loan documents be filed with Docket
22 Control, as a compliance item in this docket, within 90 days of this Decision.

23 22. Staff's recommendations are reasonable and should be adopted.

24 CONCLUSIONS OF LAW

25 1. AWC is a public service corporation within the meaning of Article XV of the Arizona
26 Constitution and A.R.S. §§ 40-281, 40-282, 40-301 and 302.

27 2. The Commission has jurisdiction over AWC and the subject matter of the application.
28

1 3. Notice of the application was given in accordance with the law.

2 4. Staff's recommendations are reasonable and should be adopted.

3 5. The financing approved herein is for lawful purposes within AWC's corporate powers,
4 is compatible with the public interest, with sound financial practices, and with the proper
5 performance by AWC of service as a public service corporation, and will not impair AWC's ability to
6 perform that service.

7 6. The financing approved herein is for the purposes stated in the application and is
8 reasonably necessary for those purposes, and such purposes are not, wholly or in part, reasonably
9 chargeable to operating expenses or to income.

10 **ORDER**

11 IT IS THEREFORE ORDERED that the application of Arizona Water Company for authority
12 to enter into a loan agreement with Bank of America Arizona for a line of credit through June 1,
13 2007, not to exceed \$28.0 million, at an interest rate not to exceed the Bank's reference rate minus
14 0.25 percentage points, shall be, and hereby is, approved.

15 IT IS FURTHER ORDERED that such authority is expressly contingent on Arizona Water
16 Company's use of the proceeds for the purposes set forth in its application.

17 IT IS FURTHER ORDERED that Arizona Water Company is hereby authorized to engage in
18 any transactions and execute any documents necessary to effectuate the authorization granted
19 hereinabove.

20 IT IS FURTHER ORDERED that Arizona Water Company shall file with Docket Control, as
21 a compliance item in this docket, within 90 days of this Decision, a copy of all executed documents
22 associated with the financing authorized herein.

23 ...

24 ...

25 ...

26 ...

27 ...

28

1 IT IS FURTHER ORDERED that the financing approved herein shall not guarantee or imply
2 any specific treatment of any capital additions for rate base or rate making purposes.

3 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

4 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

5
6
7 CHAIRMAN

COMMISSIONER

8
9
10 COMMISSIONER

COMMISSIONER

COMMISSIONER

11
12 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
13 Director of the Arizona Corporation Commission, have
14 hereunto set my hand and caused the official seal of the
15 Commission to be affixed at the Capitol, in the City of Phoenix,
16 this ____ day of _____, 2006.

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28
BRIAN C. McNEIL
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

AB:mj

1 SERVICE LIST FOR: ARIZONA WATER COMPANY

2 DOCKET NO.: W-01445A-06-0278

3 Robert W. Geake
4 ARIZONA WATER COMPANY
5 P.O. Box 29006
Phoenix, AZ 85038

6 Christopher Kempley, Chief Counsel
7 Legal Division
8 ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

9 Ernest G. Johnson, Director
10 Utilities Division
11 ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

12

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COMMISSIONERS
JEFF HATCH-MILLER - Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES



BRIAN C. McNEIL
Executive Director

ARIZONA CORPORATION COMMISSION

DATE: JULY 11, 2006
DOCKET NO: W-01445A-05-0705
TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Amy Bjelland. The recommendation has been filed in the form of an Opinion and Order on:

**ARIZONA WATER COMPANY
(CC&N EXTENSION)**

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

JULY 20, 2006

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

JULY 25, 2006 and JULY 26, 2006

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Secretary's Office at (602) 542-3931.


BRIAN C. McNEIL
EXECUTIVE DIRECTOR

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 JEFF HATCH-MILLER, Chairman
4 WILLIAM A. MUNDELL
5 MARC SPITZER
6 MIKE GLEASON
7 KRISTIN K. MAYES

8 IN THE MATTER OF THE APPLICATION OF
9 ARIZONA WATER COMPANY, AN ARIZONA
10 CORPORATION, TO EXTEND ITS CERTIFICATE
11 OF CONVENIENCE AND NECESSITY AT
12 RIMROCK, YAVAPAI COUNTY, ARIZONA.

DOCKET NO. W-01445A-05-0705

DECISION NO. _____

OPINION AND ORDER

9 DATE OF HEARING: March 21, 2006

10 PLACE OF HEARING: Phoenix, Arizona

11 ADMINISTRATIVE LAW JUDGE: Amy Bjelland

12 APPEARANCES: Mr. Robert W. Geake, Vice President and General
13 Counsel, Arizona Water Company, on behalf of
14 Applicant;

15 Mr. David Ronald, on behalf of the Arizona Corporation
Commission's Utilities Division.

16 **BY THE COMMISSION:**

17 On October 5, 2005, Arizona Water Company ("Arizona Water", "AWC", or "Applicant")
18 filed with the Arizona Corporation Commission ("Commission") an application for an extension of
19 its existing Certificate of Convenience and Necessity ("CC&N") to provide water service at Rimrock,
20 Yavapai County, Arizona.

21 On December 23, 2005, the Commission's Utilities Division Staff ("Staff") issued a letter of
22 sufficiency to Arizona Water.

23 On January 4, 2006, a procedural order was issued setting forth procedural deadlines and a
24 hearing date in this matter.

25 On January 20, 2006, Arizona Water filed notice that it caused notice of the hearing in this
26 matter to be published in the Sedona Red Rock News on January 13, 2006, and mailed a copy of the
27 notice to all affected property owners on January 12, 2006.

28 On February 21, 2006, Staff filed its Staff Report recommending approval of the application

1 with conditions.

2 On February 23, 2006, Montezuma Rimrock Water Co., LLC ("Montezuma") applied for
3 intervention in this matter. No objection was filed, and Montezuma's request for intervention was
4 granted by Procedural Order on March 6, 2006.

5 On March 3, 2006, Arizona Water filed its Responses to Staff Report.

6 On March 21, 2006, a hearing was convened before a duly authorized Administrative Law
7 Judge of the Commission. At hearing, testimony was given regarding AWC's agreement with the
8 developer of Beaver Creek Preserve, which had requested water service of the Applicant and is part
9 of the requested service area. Specifically, testimony was given that, if the CC&N extension were
10 granted, AWC would provide water to a master meter within the development of Beaver Creek
11 Preserve, and water service, individual meters, and billing within the development would be
12 administered by the Beaver Creek Wastewater Improvement District.

13 By procedural order on March 22, 2006, the Administrative Law Judge ordered additional
14 information relating to the existence and legal status of Beaver Creek Wastewater Improvement
15 District, the advisability of implementation of a master meter system within an area certificated by
16 the Commission, the existence of other such systems within Arizona that are certificated by the
17 Commission, and any other relevant information to be filed in this Docket.

18 On April 20, 2006, Staff filed its Addendum to Staff Report, indicating that based on the
19 information given at hearing regarding Arizona Water providing a master meter to the Beaver Creek
20 Wastewater Improvement District, Staff had changed its position and now recommended that portion
21 of the CC&N request be denied by the Commission.

22 Arizona Water made several requests for extensions of time to file its response to Staff's
23 Addendum to Staff Report, all of which were granted. On June 20, 2006, Arizona Water filed its
24 Response to Addendum to Staff Report and stated that in cooperation with Yavapai County and the
25 developer of the Beaver Creek Preserve, it had sought and obtained a dissolution of the Beaver Creek
26 Wastewater Improvement District and would now propose to provide individual meter service to the
27 homes in that area.

28 * * * * *

1 Having considered the entire record herein and being fully advised in the premises, the
2 Commission finds, concludes, and orders that:

3 **FINDINGS OF FACT**

4 1. Pursuant to authority granted by the Commission, Arizona Water is an Arizona
5 corporation that provides water utility service to approximately 73,000 customers in various portions
6 of Cochise, Coconino, Gila, Maricopa, Navajo, Pima, Pinal and Yavapai Counties in Arizona.

7 2. On October 5, 2005, Arizona Water filed an application for approval of an extension
8 to its CC&N for its Rimrock system. The proposed extension area encompasses portions of three
9 sections in an unincorporated area north of Camp Verde, Yavapai County, Arizona. Exhibit A,
10 attached hereto, illustrates the extension area and its proximity to AWC's current Rimrock system
11 (which is contiguous to the south) as well as to Montezuma's current service area (which is
12 contiguous to the east). For ease of reference, the requested extension area has been divided into
13 three parcels as reflected in Exhibit A; Parcel One (consisting of approximately 95 acres), Parcel Two
14 (consisting of approximately 160 acres), and Parcel Three (consisting of approximately 160 acres).
15 Attached to the Application was a request for service from the landowner of Parcel One, America
16 West Capital One, LC, which is the developer of the Beaver Creek Preserve, and a list of all
17 landowners of record for Parcels Two and Three to whom notifications of the hearing in this matter
18 were sent.

19 3. In order to provide water utility service to Parcel Three, Arizona Water proposes to
20 run a 12-inch main from its current service territory south of Parcel Two through the eastern half of
21 Parcel Two to reach the proposed development area located in Parcel One. This placement is in very
22 close proximity to Parcel Three. Mr. Michael Whitehead, Vice President of Engineering for Arizona
23 Water, testified that there are several homes that are in close proximity to the proposed line route, and
24 therefore AWC requested a CC&N extension for all three parcels. Mr. Whitehead testified that

25 when Arizona Water Company runs a 12-inch pipeline of adequate
26 capacity to serve quite a few folks, there will be, particularly if this
27 12-inch pipeline is run through an area where they have never had
28 the opportunity to request water service in the past,...many requests

1 for service from that 12-inch pipeline.¹

2 Mr. Whitehead stated that AWC received no objections from any of the property owners who were
3 notified of the proceeding in Parcels Two and Three.

4 4. Mr. Whitehead testified that due to the topography of Parcel Three, it would be a
5 difficult undertaking to provide water utility service to the area. He also stated that sewer utility
6 service to Parcels Two and Three would almost certainly be by septic tanks because the smallest lot
7 size on each of these parcels appears to be one and one-half acres, which lends itself to septic tanks.²
8 Mr. Reginald Owens, President of Beaver Creek Preserve, Inc. and America West Capital One, LC,
9 testified that America West Capital One, LC, is developing a 166 lot subdivision, Thunder Ridge³,
10 adjacent to Parcel One in a different Section, and the development plans call for septic tanks.⁴ Mr.
11 Owens testified that, as part of the development deal with Yavapai County for Beaver Creek
12 Preserve, the developer agreed to establish a special district for wastewater treatment that would
13 provide wastewater utility service to the area.⁵

14 5. Staff did not recommend approval of a CC&N extension to Parcel Three because it is
15 contiguous to another water company's service territory, and neither company currently has requests
16 for service to the area.

17 **Beaver Creek Preserve**

18 6. At hearing, testimony was given regarding AWC's agreement with the developer of
19 Beaver Creek Preserve, which has requested water service of the Applicant and is part of the
20 requested service area. Mr. Owens testified that, if the CC&N extension is granted, AWC would
21 provide water to a master meter within the development of Beaver Creek Preserve, and water service,
22 individual meters and billing within the development would be administered by the Beaver Creek
23 Wastewater Improvement District.⁶ The reason given for this arrangement by Mr. Owens was the
24 need for booster pumps to provide consistent water pressure at various elevations within the
25

26 ¹ Tr. at 19, 20.

27 ² Id. at 23 and 24, 30 and 31.

28 ³ Thunder Ridge lots are served by individual wells.

⁴ Id. at 35.

⁵ Id. at 36.

⁶ Id. at 44.

1 development.⁷

2 7. By procedural order issued on March 22, 2006, Staff was ordered to file additional
3 information relating to the existence and legal status of Beaver Creek Wastewater Improvement
4 District, the advisability of implementation of a master meter system within an area certificated by
5 the Commission, the existence of other such systems within Arizona that are certificated by the
6 Commission, and any other relevant information.

7 8. On April 20, 2006, Staff filed its Addendum to Staff Report, indicating that based on
8 the information at hearing regarding Arizona Water providing a master meter to the Beaver Creek
9 Wastewater Improvement District, Staff had changed its position and now recommended that portion
10 of the CC&N request be denied by the Commission.

11 9. Because Arizona Water would not be responsible for the water delivery facilities
12 within Parcel One, nor for the billing or interface with the end user customer as would normally be
13 done within a CC&N area, Staff stated its recommendation that the CC&N not be extended to Parcel
14 One.

15 10. Staff's revised recommendation would obviate the perceived convenience or necessity
16 of providing Parcels Two and Three, as the only request for service filed in this docket is that of
17 Beaver Creek Preserve, located in Parcel One.

18 11. Arizona Water made several requests for extensions of time to file its response to
19 Staff's Addendum to Staff Report, all of which were granted. On June 20, 2006, Arizona Water filed
20 its Response to Addendum to Staff Report and stated that, in cooperation with Yavapai County and
21 the developer of the Beaver Creek Preserve, it has sought and obtained a dissolution of the Beaver
22 Creek Wastewater Improvement District and would now be providing individual meter service and
23 billing to the homes in that area.

24 12. Because Arizona Water has arranged to provide individual meter service and, with the
25 cooperation of the developer and Yavapai County, has arranged for the dissolution of the Beaver
26 Creek Wastewater Improvement District, Staff's recommendations made in the Addendum to Staff

27
28 ⁷ *Id.* at 49.

1 Report are now moot. By Procedural Order issued on July 6, 2006, Arizona Water was ordered to
2 file an update regarding how sewer service would be provided to the Beaver Creek Preserve. On July
3 10, 2006, Arizona Water filed its Response to Request for Information Concerning Sewer Service
4 within Beaver Creek Preserve, stating that sewer service will be provided by a Domestic Wastewater
5 Improvement District through a package wastewater treatment system.

6 **Montezuma**

7 13. On February 23, 2006, Montezuma applied for intervention in this matter. No
8 objection was filed, and Montezuma's request for intervention was granted by Procedural Order on
9 March 6, 2006.

10 14. In Decision No. 67583 (Feb. 15, 2005), the Commission approved the transfer of the
11 Certificate and sale of assets of Montezuma Property Owners association, a for-profit water company,
12 to Montezuma. The Decision notes that although Arizona Water expressed interest in acquiring
13 Montezuma, the board of the Montezuma Estates Property Owners Association met with its
14 members, who indicated that they did not wish to sell to AMC as they wished to "stay small."

15 15. Staff contacted Montezuma due to the proximity of the requested extension area to
16 Montezuma's existing CC&N. Although Montezuma did not produce written requests for service
17 from property owners in Parcel Three, Mrs. Patricia Olsen, owner of Montezuma, testified that
18 Montezuma has been asked informally to provide water service after development begins in that
19 area.⁸ Montezuma did not have an application for CC&N extension pending at the time of the
20 hearing in this matter.

21 16. Mr. Owens testified that Beaver Creek Preserve had considered requesting service of
22 Montezuma, but stated that the required cash infusion to the company from the developer made the
23 arrangement disadvantageous to Beaver Creek.⁹

24 **AWC's Water System**

25 17. The Rimrock system is comprised of six wells with a total production capacity of 485
26 gallons per minute, 460,000 gallons of storage capacity, booster pumps, pressure tanks, and a
27

28 ⁸ *Id.* at 59.

⁹ *Id.* at 36, 37.

1 distribution system serving approximately 1,200 connections.

2 18. Staff determined that Arizona Water will have sufficient capacity to provide service to
3 the extension area and to continue to provide water to its current service territory, including customer
4 growth.

5 19. Arizona Water will finance the facilities necessary to provide service to the extension
6 area by a main extension agreement.

7 20. The Arizona Department of Environmental Quality ("ADEQ") regulates the Rimrock
8 water system and has determined that it is currently delivering water that meets the water quality
9 standards required by Arizona Administrative Code, Title 18, Chapter 4.

10 21. The Rimrock system is not within an Active Management Area and is therefore not
11 subject to the Arizona Department of Water Resources' ("ADWR") reporting and conservation rules.

12 22. Arizona Water currently has no outstanding Commission compliance issues according
13 to the Utilities Division Compliance Section, nor were there any complaints or comments filed by
14 customers of the Rimrock system during 2005 and 2006.

15 23. The most recent lab analysis submitted by AWC indicated that the arsenic levels in
16 several of its wells exceed the U.S. Environmental Protection Agency arsenic standard of 10
17 micrograms per liter. AWC is currently in the process of constructing arsenic remediation facilities
18 to meet the new standard in its Rimrock system. According to Staff, these facilities will be
19 completed later this year.

20 24. Arizona Water will provide water utility service to customers within the extension
21 area under its currently authorized rates and charges for the Rimrock system.

22 25. Arizona Water has been granted a franchise by Yavapai County which encompasses
23 the extension area.

24 26. Because an allowance for the property tax expense of Arizona Water is included in the
25 Company's rates and will be collected from its customers, the Commission seeks assurances from the
26 Company that any taxes collected from ratepayers have been remitted to the appropriate taxing
27 authority. It has come to the Commission's attention that a number of water companies have been
28 unwilling or unable to fulfill their obligation to pay the taxes that were collected from ratepayers,

1 some for as many as twenty years. It is reasonable, therefore, that as a preventative measure Arizona
2 Water annually file, as part of its annual report, an affidavit with the Utilities Division attesting that
3 the company is current in paying its property taxes in Arizona.

4 **Staff Recommendations**

5 27. Staff stated that it is in the public interest for the Commission to approve Arizona
6 Water's application for CC&N extension to Parcels One and Two because there is a request for
7 service from the landowner of Parcel One, and the proposed twelve-inch main will run through Parcel
8 Two, enabling the availability of water service to that parcel. Staff concluded that it is not in the
9 public interest at this time to approve Arizona Water's extension into Parcel Three due to the lack of
10 a request for service and due to its proximity to Montezuma.

11 28. Staff further recommends:

12 1) Arizona Water should file, as a compliance item in this docket, a copy of the
13 Approval to Construct for the extension facilities within one year from the date of the
14 Decision in this matter.

15 2) Arizona Water should charge its authorized Rimrock system rates and charges
16 to the customers within the extension area until such time as they are changed by order of the
17 Commission.

18 3) Arizona Water should file, as a compliance item in this docket, copies of the
19 developer's letter of Adequate Water Supply, stating that there is adequate water for the
20 requested area, no later than one year from the effective date of an order approving this
21 extension.

22 4) That the Decision granting the requested CC&N extension be considered null
23 and void, after due process, should Arizona Water fail to meet the preceding three conditions
24 within the time specified.

25 29. Because of the unique circumstance by which service through Parcel Two is necessary
26 for the support of providing service to Parcel One, we find that granting Arizona Water a Certificate
27 for Parcels One and Two is in the public interest.

28 30. At this time, considering the totality of circumstances including the fact that there are

1 no requests for service in Parcel Three, and including the intervention of Montezuma, it is premature
2 to grant Arizona Water a CC&N to serve Parcel Three. Nothing prohibits Arizona Water from
3 providing service to Parcel Three at a later time when there are requests for service.

4 CONCLUSIONS OF LAW

5 1. Arizona Water is a public service corporation within the meaning of Article XV of the
6 Arizona Constitution and A.R.S. §40-281 *et seq.*

7 2. The Commission has jurisdiction over Arizona Water and the subject matter of the
8 application.

9 3. Notice of the application was provided in accordance with law.

10 4. There is a public need and necessity for water utility service in the proposed extension
11 area.

12 5. Arizona Water is a fit and proper entity to receive an extension of its water CC&N to
13 include the service area more fully described in Exhibit A attached hereto, subject to compliance with
14 the conditions set forth above.

15 ORDER

16 IT IS THEREFORE ORDERED that the application for CC&N extension for the Parcels One
17 and Two, more specifically described in the legal description in attached Exhibit B, shall be, and
18 hereby is, granted.

19 IT IS FURTHER ORDERED that Arizona Water Company shall file with Docket Control as
20 a compliance item in this docket a revised legal description including only Parcels One and Two
21 within 30 days of the date of this Decision.

22 IT IS FURTHER ORDERED that Arizona Water Company shall file, as a compliance item in
23 this docket, a copy of the Approval to Construct for the extension facilities within one year from the
24 date of this Decision.

25 IT IS FURTHER ORDERED that Arizona Water Company shall charge its authorized
26 Rimrock system rates and charges to the customers within the extension area until such time as they
27 are changed by order of the Commission.

28 IT IS FURTHER ORDERED that Arizona Water Company shall file, as a compliance item in

this docket, copies of the developer's letter of Adequate Water Supply, stating that there is adequate water for the requested area, no later than one year from the effective date of this Decision.

IT IS FURTHER ORDERED that this Decision shall be considered null and void, after due process, should Arizona Water fail to meet the conditions of the preceding three ordering paragraphs within the time specified.

IT IS FURTHER ORDERED that Arizona Water Company shall annually file as part of its annual report, an affidavit with the Utilities Division attesting that the Company is current in paying its property taxes in Arizona.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this ____ day of _____, 2006.

BRIAN C. McNEIL
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

1 SERVICE LIST FOR: ARIZONA WATER COMPANY

2 DOCKET NO.: W-01445A-05-0705

3 Robert W. Geake
4 Arizona Water Company
5 P.O. Box 29006
Phoenix, AZ 85038

6 Patricia D. Olsen
7 MONTEZUMA RIMROCK WATER CO., LLC.
8 P.O. Box 10
4599 E. Goldmine Road
Rimrock, AZ 86336

9 Christopher Kempley, Chief Counsel
10 Legal Division
ARIZONA CORPORATION COMMISSION
11 1200 West Washington Street
Phoenix, AZ 85007

12 Ernest G. Johnson, Director
13 Utilities Division
ARIZONA CORPORATION COMMISSION
14 1200 West Washington
Phoenix, AZ 85007

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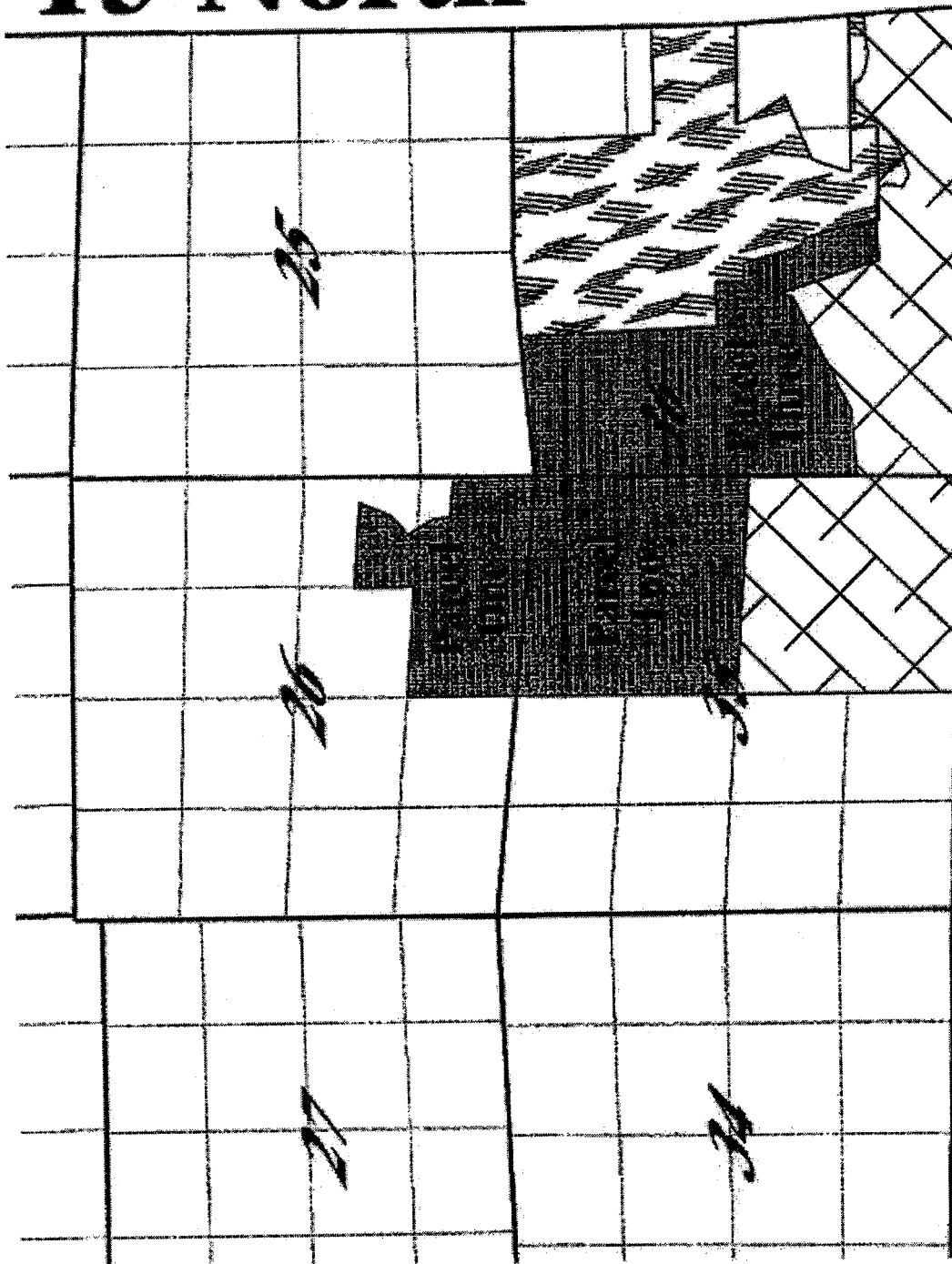
27

28

EXHIBIT 2

EXHIBIT A

15 North



DECISION NO. _____

7/11/2006

EXHIBIT B

EXHIBIT 1

CC&N This Application
REVISEDPARCEL ONE

A parcel of land situated within the Southeast quarter of Section 26, Township 15 North, Range 5 East of the Gila and Salt River Base and Meridian, Yavapai County, Arizona, described as follows:

BEGINNING at the Southwest corner of said Southeast quarter;

Thence N00°15'49"W, a distance of 1392.97 feet to the Northwest corner of the South half of the Southeast quarter of said Section 26;

Thence S85°10'44"E, a distance of 1341.11 feet to the Southwest corner of the South half of the Northeast quarter of the Southeast quarter of said Section 26;

Thence N00°16'13"W, a distance of 709.28 feet to the Northwest corner of said South half of the Northeast quarter of the Southeast quarter of said Section 26;

Thence S85°42'56"E, along the North line of said South half of the Northeast quarter of the Southeast quarter of said Section 26, a distance of 1018.16 feet;

Thence S23°56'15"W, along the boundary of Thunder Ridge - Phase V, according to Book 52 of Maps, Pages 27, 28 and 29 of records, Yavapai County, Arizona, a distance of 414.11 feet;

Thence S49°52'50"W, along said boundary, a distance of 292.91 feet;

Thence S31°19'38"E, along said boundary, a distance of 338.57 feet;

Thence S08°55'58"E, along said boundary, a distance of 226.69 feet;

Thence S82°57'02"E, along said boundary, a distance of 511.00 feet;

Thence S00°17'07"E, along the East line of the Southeast quarter of said Section 26, a distance of 1047.53 feet to the Southeast corner said Section 26;

Thence N84°04'52"W, a distance of 2687.84 feet to The POINT OF BEGINNING.

PARCEL TWO

The Northeast quarter of Section 35, Township 15 North, Range 5 East of the Gila and Salt River Base and Meridian, Yavapai County, Arizona.

PARCEL THREE

That portion of Section 36, Township 15 North, Range 5 East of the Gila and Salt River Base and Meridian, Yavapai County, Arizona, described as follows:

DECISION NO. _____

BEGINNING at the Northwest corner of said Section 36;

Thence N84°25'00"E, coincident with the North line of said Section 36, a distance of 1669.20 feet to the Northwest corner of Lake Montezuma Estates, Unit One, according to Book 13, Map 29 of records, Yavapai County, Arizona;

Thence S02°01'45"E, along the westerly boundary line of said Unit One, a distance of 2339.99 feet;

Thence N88°24'55"E, along a boundary line of said Unit One, a distance of 534.25 feet;

Thence S02°01'45"E, along a boundary line of said Unit One, a distance of 162.84 feet to a corner of said Lake Montezuma Estates Unit One, said corner also being a corner of Lake Montezuma Estates Unit Two, according to Book 13, Map 30 of records, Yavapai County, Arizona;

Thence continuing S02°01'45"E, along said Unit Two boundary, a distance of 162.84 feet;

Thence N88°24'55"E, along said Unit Two boundary, a distance of 205.75 feet;

Thence S15°18'03"E, along said Unit Two boundary, a distance of 627.15 feet;

Thence S31°10'33"E, along said Unit Two boundary, a distance of 88.45 feet;

Thence S53°17'03"E, along said Unit Two boundary, a distance of 106.00 feet;

Thence S14°17'03"E, along said Unit Two boundary, a distance of 860.00 feet;

Thence leaving said Unit Two boundary, S86°05'30"W, a distance of 495.06 feet to the most easterly corner of Montezuma Haven, according to Book 13, Page 73 of records, Yavapai County, Arizona;

Thence N17°50'00"W, coincident with the westerly boundary of said Montezuma Haven, a distance of 1228.20 feet;

Thence S20°56'00"W, a distance of 153.40 feet;

Thence S63°16'00"W, a distance of 1506.90 feet;

Thence S85°22'30"W, a distance of 790.00 feet to a point on the West line of said Section 36;

Thence N00°49'00"E, coincident with the West line of said Section 36, a distance of 3808.29 feet to the Northwest corner of said Section 36 and the POINT OF BEGINNING.

DECISION NO. _____

COMMISSIONERS
JEFF HATCH-MILLER - Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES



BRIAN C. McNEIL
Executive Director

ARIZONA CORPORATION COMMISSION

DATE: January 31, 2006

DOCKET NO: W-01445A-05-0469

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Amy Bjelland. The recommendation has been filed in the form of an Opinion and Order on:

ARIZONA WATER COMPANY
(CC&N EXTENSION)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00 p.m.** on or before:

FEBRUARY 9, 2006

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

FEBRUARY 14 AND 15, 2006

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.


BRIAN C. McNEIL
EXECUTIVE DIRECTOR

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 JEFF HATCH-MILLER, Chairman
4 WILLIAM A. MUNDELL
5 MARC SPITZER
6 MIKE GLEASON
7 KRISTIN K. MAYES

8 IN THE MATTER OF THE APPLICATION OF
ARIZONA WATER COMPANY FOR AN
EXTENSION OF ITS CERTIFICATE OF
CONVENIENCE AND NECESSITY.

DOCKET NO. W-01445A-05-0469

DECISION NO. _____

OPINION AND ORDER

9 DATE OF HEARING:

December 9, 2005

10 PLACE OF HEARING:

Phoenix, Arizona

11 ADMINISTRATIVE LAW JUDGE:

Amy B. Bjelland

12 APPEARANCES:

Mr. Robert Geake, Vice President and General
Counsel, Arizona Water Company, on behalf of
Applicant;

Mr. David Ronald, Staff Attorney, Legal
Division, on behalf of the Utilities Division of
the Arizona Corporation Commission; and

Mr. Thomas Campbell, LEWIS AND ROCA,
LLP, on behalf of the City of Eloy.

13 **BY THE COMMISSION:**

14 On June 30, 2005, Arizona Water Company ("Arizona Water", "AWC", or "Applicant") filed
15 with the Arizona Corporation Commission ("Commission") an application for an extension of its
16 existing Certificate of Convenience and Necessity ("CC&N") to provide water service in portions of
17 Pinal County, Arizona.

18 Notice of the application was provided in accordance with the law.

19 On October 26, 2005, Arizona Water filed its Certificate of Filing Franchise for the City of
20 Casa Grande. Its franchise to operate in Pinal County was filed with its application.

21 On November 2, 2005, the City of Eloy ("Eloy") applied for intervention in this matter.
22 Eloy's request for intervention was granted by Procedural Order on November 17, 2005.

23 On November 10, 2005 the Commission's Utilities Division Staff ("Staff") filed its Staff

1 Report recommending approval of the application with conditions.

2 * * * * *

3 Having considered the entire record herein and being fully advised in the premises, the
4 Commission finds, concludes, and orders that:

5 **FINDINGS OF FACT**

6 **Background of Application**

7 1. Pursuant to authority granted by the Commission, Arizona Water is an Arizona
8 corporation that provides water utility service to approximately 73,000 customers in various portions
9 of Cochise, Coconino, Gila, Maricopa, Navajo, Pima, Pinal and Yavapai Counties in Arizona.

10 2. On June 30, 2005, Arizona Water filed with the Commission an Application for an
11 extension of its existing CC&N to provide water service in portions of Pinal County, Arizona. The
12 proposed extension area includes over 1,500 acres contained in eight non-contiguous parcels in and
13 around the cities of Casa Grande and Eloy.

14 3. On July 21, 2005, Staff filed an Insufficiency Letter.

15 4. On August 30, 2005, Arizona Water filed Additional Information in Response to
16 Staff's Insufficiency Letter.

17 5. On September 7, 2005, Staff filed a Letter of Sufficiency.

18 6. On September 26, 2005, a Procedural Order issued setting forth deadlines for filings in
19 this docket.

20 7. Notice of the application was provided in accordance with the law.

21 8. On October 26, 2005, Arizona filed its Certificate of Filing Franchise for the City of
22 Casa Grande.

23 9. On November 2, 2005, Eloy applied for intervention in this matter. Eloy's request for
24 intervention was granted by Procedural Order on November 17, 2005.

25 10. On November 9, 2005, Staff filed a Motion for Extension of Time to file its Staff
26 Report until November 17, 2005 and for a similar extension of time for Arizona Water to file its
27 response. This request was granted by Procedural Order on November 10, 2005.

28 11. On November 10, 2005, Eloy filed its Notice of Filing Direct Testimony of Doug

1 Olson and Staff filed its Staff Report. Staff recommended approval of the application with
2 conditions.

3 12. On December 1, 2005, in response to Staff's recommendation in its Staff Report,
4 Arizona Water filed its Notice of Filing Revised Legal Description. On this same date, Arizona
5 Water also filed its Responses to the Staff Report and City of Eloy's Testimony.

6 13. A hearing convened on December 9, 2005, before a duly authorized Administrative
7 Law Judge of the Commission. Each party appeared with counsel. At hearing, without objection,
8 Arizona Water orally amended its application to remove Parcel 2, doing so at the request of the
9 landowner of Parcel 2, and Staff introduced, without objection, Staff's revised recommendations. At
10 the conclusion of the hearing, the matter was taken under advisement pending docketing of late-filed
11 exhibits.

12 14. On January 4, 2006, the City of Eloy filed its Notice of Filing Late Filed Exhibit
13 showing the current City of Eloy municipal boundary. Staff filed its Notice of Filing Late Filed
14 Exhibit showing certificated water companies located and operating within Eloy's planned
15 development area.

16 15. On January 13, 2006, Eloy filed its Response to the Arizona Corporation Commission
17 Staff's Late Filed Exhibit.

18 16. On January 25, 2006, Eloy filed its Notice of Filing Late-Filed Exhibit.

19 **Water System**

20 17. Staff stated that Arizona Water's Casa Grande system has 14 wells producing 15,240
21 gallons per minute ("GPM"), 14.192 million gallons of storage capacity, and a distribution system
22 serving 17,707 service connections as of June 2005. Staff stated that based on its existing well
23 production and storage capacities, the Casa Grande system can serve approximately 20,600 service
24 connections. Staff stated that the total customers to be served in the expansion area at total build out
25 are anticipated to be 4,920. Staff stated that based on Arizona Water's historical growth rates, its
26 existing Casa Grande service area could grow to approximately 25,500 connections at the end of five
27 years. Arizona Water indicated in its application that it would be at least five years before it would
28 serve its first customer in Parcels 4, 5, 6, 7 and 8 and predicts 80 additional connections for the

1 proposed CC&N extension areas at the end of five years, resulting in a projected total customer base
2 of approximately 25,900 in the Casa Grande system at the end of five years.

3 18. Staff concluded that the existing Casa Grande system will have adequate production
4 and storage capacity to serve the existing and proposed CC&N extension areas within a conventional
5 five year planning period and can reasonably be expected to develop additional production and
6 storage as required in the future.

7 19. Arizona Water plans to finance the required utility facilities through advances in aid of
8 construction, which generally take the form of Main Extension Agreements ("MXAs"). MXAs
9 between water utilities and private parties are governed by A.A.C. R14-2-406, and result in developer
10 construction of the facilities, conveyance of the facilities to the utility company, and a refund by the
11 water utility of ten percent of the annual revenue associated with the line to the developer for a period
12 of ten years. Staff recommended that Arizona Water file with Docket Control, as a compliance item
13 in this docket, a Notice of Filing indicating that Arizona Water has submitted for Staff's review and
14 approval a copy of the fully executed MXAs for water facilities to each parcel within the extension
15 area, except for Parcel 1¹, within two years of a decision in this case.

16 20. Arizona Water plans to provide water utility service to the extension area under its
17 authorized rates and charges.

18 21. Staff stated that the Arizona Department of Environmental Quality ("ADEQ")
19 regulates Arizona Water's Casa Grande water system under ADEQ Public Water System I.D. #11-
20 009. Staff further stated that based on compliance information submitted by Arizona Water, the
21 system has no deficiencies and ADEQ has determined that this system is currently delivering water
22 that meets ADEQ water quality standards.

23 22. Arizona Water is located within the Pinal Active Management Area ("AMA"), one of
24 five AMAs in Arizona designed to address water supply needs of each area and designated as such by
25 the Arizona Department of Water Resources ("ADWR"). Staff stated that the goal of the Pinal AMA
26 is to allow the development of non-irrigation water uses, extend the life of the agricultural economy

27 ¹ Parcel 1 was thought by Arizona Water to be within the existing CC&N, and service to this parcel has been in effect
28 since 1962. Through Staff's review of other matters in and around Casa Grande, Applicant learned that this parcel was
not within its CC&N service area.

1 for as long as feasible, and preserve water supplies for future non-agricultural uses. Arizona Water is
2 subject to the reporting and conservation rules of ADWR, and Staff stated that ADWR has indicated
3 that Arizona Water is in compliance with the Pinal AMA requirements.

4 23. Staff recommended that Arizona Water be required to file with Docket Control, as a
5 compliance item in this docket, a copy of the developers' Certificates of Assured Water Supply,
6 stating that there is adequate water supply, where applicable or when required by statute, within two
7 years of the effective date of the Decision in this matter.

8 24. Rules established by the United States Environmental Protection Agency ("EPA")
9 require the maximum contaminant level ("MCL") for arsenic in potable water to be reduced from 50
10 parts per billion ("ppb") to 10 ppb, effective January 23, 2006.

11 25. Arsenic levels for the Casa Grande system's wells range from 7 ppb to 45 ppb. Staff
12 stated that Arizona Water is developing a treatment plan to comply with the new arsenic standard.
13 The Commission approved an accounting order authorizing the deferral of certain costs and expenses
14 related to arsenic treatment that Arizona Water expects to incur for its Western Group, which
15 includes its Casa Grande system and the extension area, in Decision No. 67518 (January 20, 2005).
16 An accounting order is a rate-making mechanism whereby a regulatory commission provides specific
17 deferral authorization to treat costs in a manner that differs from generally accepted accounting
18 principles. Such a deferral mechanism is permitted, pursuant to an authorized accounting order,
19 under National Association of Regulatory Utility Commissioners ("NARUC") Uniform System of
20 Accounts ("USOA") guidelines.

21 26. Staff stated that a Curtailment Plan Tariff ("CPT") is an effective tool to allow a water
22 company to manage resources during periods of water shortages due to pump breakdowns, droughts,
23 or other unforeseeable events. Arizona Water has an approved CPT for "All Service Areas" pursuant
24 to Decision No. 66235 (July 23, 2004).

25 **Staff's Recommendations**

26 27. Staff recommended that the Commission approve Arizona Water's application for
27 extension of its existing CC&N to provide water service in Pinal County subject to Arizona Water's
28 compliance with the following conditions:

1 (a) That AWC file with Docket Control an amended legal description excluding
2 the Parcels that are within the corporate city limits of the City of Eloy, specifically Parcels 2
3 and 8, prior to the hearing in this matter.

4 (b) That AWC charge its authorized rates and charges in the extension area.

5 (c) That AWC file with Docket Control, as a compliance item in this docket, a
6 Notice of Filing indicating AWC has submitted for Staff's review and approval, a copy of the
7 fully executed main extension agreements for water facilities for each parcel within the
8 extension area, except for Parcel 1, within two years of the Decision in this case.

9 (d) That AWC file with Docket Control, as a compliance item in this docket, a
10 copy of the Arizona Department of Environmental Quality Approval to Construct ("ATC")
11 for the facilities needed to serve each of the Parcels within the requested areas, except for
12 Parcel 1, within two years of the Decision in this case.

13 (e) That AWC file with Docket Control, as a compliance item in this docket, a
14 copy of the developers' Certificates of Assured Water Supply for each of the Parcels within
15 the requested areas, except for Parcel 1, stating that there is adequate water supply, where
16 applicable or when required by statute, within two years of the Decision in this case.

17 (f) That the Commission's Decision granting the requested CC&N extension be
18 considered null and void if AWC fails to meet conditions (c), (d), and (e) listed above within
19 the time specified.

20 28. AWC filed with Docket Control an amended legal description excluding the Parcels
21 that are within the corporate city limits of the City of Eloy, specifically Parcels 2 and 8, prior to the
22 hearing in this matter and therefore this condition is satisfied. However, AWC continues to seek to
23 include Parcel 8 in its CC&N request.

24 **Parcel 1**

25 29. Arizona Water currently serves approximately 200 existing service connections in
26 Parcel 1 and is projecting to increase to 230 connections within five years. At build out, this parcel
27 could have approximately 1,000 connections.

28 30. Consistent with Staff's recommendation, we believe it is in the public interest to grant

1 Arizona Water's application for CC&N extension to Parcel 1.

2 **Parcel 2**

3 31. As stated above, at hearing, Arizona Water orally amended its application to remove
4 Parcel 2, doing so at the request of the landowner of Parcel 2.

5 **Parcel 3**

6 32. Parcel 3 is contiguous to Arizona Water's existing CC&N located to the west of Eloy
7 and south of Casa Grande and contains approximately 618 acres. Although at build out, Applicant
8 anticipates approximately 1,500 customers, Arizona Water anticipates no new customers within the
9 first year for Parcel 3 and only 25 customers within five years.

10 33. Staff recommended inclusion of Parcel 3 in the CC&N extension. Parcel 3 is outside,
11 but contiguous to Eloy's municipal boundary and is located within Eloy's planned development area.
12 Eloy objected to extending Arizona Water's CC&N to Parcel 3. Eloy's main concern appears to be
13 the potential cost to be borne in the future by Eloy and its taxpayers via an eminent domain
14 proceeding if or when Eloy annexes Parcel 3.

15 34. Jacqueline Warren, owner of Parcel 3 with her husband, testified that she asked
16 Arizona Water to expand its certificated area to include her property. She stated that with regard to
17 sewer service, a sewer utility is located near Parcel 3 that could provide service to her parcel. Mrs.
18 Warren testified that at this time, she and her husband farm their land.

19 35. Mrs. Warren testified that she and her husband wish to obtain water utility service
20 prior to marketing their parcel to developers, and to this end they requested service of Arizona Water.
21 Eloy is concerned for the potential cost borne by the taxpayers via the just compensation requirement
22 of eminent domain. Although this concern is reasonable, Parcel 3 is not within Eloy's city limits and
23 Eloy provided no timeframe for when service would be provided.

24 36. Based on the existing request for service and Arizona Water's ability to provide that
25 service, consistent with Staff's recommendation, we believe it is in the public interest to grant
26 Arizona Water's application for CC&N extension to Parcel 3.

27 **Parcels 4, 5, 6, and 7**

28 37. Each of these parcels is located several miles from Arizona Water's existing

1 distribution mains. Parcel 4 consists of approximately 320 acres; Parcel 5 of approximately 300
2 acres; Parcel 6 of approximately 164 acres; and Parcel 7 of approximately 85 acres. Staff stated that
3 water service to these parcels will depend upon construction of other planned developments to bring
4 the water closer to these parcels before their development.

5 38. Staff stated that at build out, Parcel 4 could have about 400 customers; Parcel 5 about
6 200 customers; Parcel 6 about 150 customers; and Parcel 7 about 150 customers.

7 39. Consistent with Staff's recommendation and based upon the requests for service to
8 these parcels, we believe it is in the public interest to grant Arizona Water's application for CC&N
9 extension to Parcels 4, 5, 6, and 7.

10 **Parcel 8**

11 40. This parcel contains approximately 40 acres and is located several miles from Arizona
12 Water's existing distribution mains. Staff stated that water service to this parcel will depend upon
13 construction of other planned developments to bring the water closer to this parcel before its
14 development. Arizona Water stated in its Application that it anticipates no new customers within the
15 first five years and that at build out, Parcel 8 could have about 20 customers. However, at hearing,
16 the owner of Parcel 8 testified that he prefers to begin development as soon as possible.

17 41. Parcel 8 is within Eloy's city limits, and Staff did not recommend inclusion of Parcel 8
18 in Applicant's CC&N extension. Eloy objected to extension of Applicant's CC&N to this parcel.

19 42. Arizona law requires every applicant for a CC&N or CC&N extension to submit
20 evidence to the Commission that the applicant has received consent, franchise or permit from the
21 proper authority prior to being granted the CC&N or CC&N extension. Specifically, Section 40-
22 282(B), Arizona Revised Statutes, requires "[e]very applicant for a certificate [to submit]
23 evidence...to show that the applicant has received the required consent, franchise or permit of the
24 [applicable government authority]." Arizona Water does not have a franchise agreement or other
25 consent to operate within the City of Eloy. Staff stated that the inclusion of Parcel 8 in the CC&N
26 extension as proposed by Arizona Water may create an infringement or encroachment without
27 permission if approved by the Commission. For this reason, Staff requested of Arizona Water, and
28 Arizona Water docketed, a revised legal description excluding Parcel 8 prior to the hearing.

1 43. In the instant case, Eloy has clearly stated that Arizona Water has no such consent,
2 franchise or permit; and Doug Olson, Water/Wastewater System Manager for the City of Eloy,
3 testified that Eloy would not grant such authority within its city limits as Eloy desires to serve its own
4 constituents within its municipal boundaries. However, there is nothing in the record to show that
5 Eloy has already denied a franchise or other consent to Arizona Water to operate within its municipal
6 boundary.

7 44. Mr. Olson further stated Eloy's concern with having various water companies located
8 within the city limits is that the public interest would be harmed as Eloy would be required to use
9 eminent domain and its associated requirement of compensation, using taxpayer money, to the holder
10 of the interest in the condemned property prior to inclusion in Eloy's water system. Eloy stated that
11 Parcel 8 is surrounded by planned developments that the city is currently working on with developers
12 so that Eloy will be able to serve the parcel by the time any development occurs.

13 45. Derrick Ethington, owner of Parcel 8, testified that he asked Arizona Water to expand
14 its certificated area to include his property. Regarding sewer service, he stated his wish to develop
15 one-acre residential lots that will enable the use of a septic system. Mr. Olsen testified that he does
16 not believe Mr. Ethington will be allowed to have septic tanks pursuant to county code.

17 46. Mr. Ethington further testified that he requires water service to develop his property,
18 that he has a complete plat application pending with Eloy, and that he hopes to develop Parcel 8
19 within the next six months. He testified that he submitted a request for service to Arizona Water
20 because Eloy would be unable to provide water consistent with his desired timeframe for service, and
21 because Eloy's water main was six miles from his property and would be more financially
22 burdensome for him to connect than Arizona Water's water main, which is only one mile from his
23 property. However, Mr. Olsen testified that to his knowledge, and based upon conversation with the
24 Planning and Zoning Director of Eloy, Mr. Ethington has not submitted all of the information
25 required for a preliminary plat application.

26 47. Because the landowner has demonstrated need and requested service and no other
27 provider is available to provide service in a timely manner, and because Eloy has not taken official
28 action to either approve or deny Arizona Water a franchise, we believe granting an Order Preliminary

1 to a CC&N is appropriate for Parcel 8. Staff's Late Filed Exhibit shows other regulated water
2 companies to be located within the City of Eloy's planning area. Eloy pointed out that all of the
3 water companies within the current planning area received their CC&Ns prior to the establishment of
4 Eloy's current boundaries. Nonetheless, Arizona Water has a request for service to this parcel and is
5 ready, willing and able to provide service. An Order Preliminary to a CC&N will give Arizona
6 Water the opportunity to request official action of Eloy regarding a franchise for operation within
7 Eloy's municipal boundary. Based on Mr. Ethington's desired timeframe for development, this is the
8 most equitable result.

9 48. We will therefore require that Arizona Water file, within one year of this Decision, as
10 a compliance item in this docket, evidence that it has obtained a franchise or other consent from Eloy
11 for the purpose of providing water utility service within Parcel 8. If the franchise or other consent to
12 operate within Parcel 8 is not granted by Eloy within one year from the date of this Decision, then the
13 Order Preliminary shall be null and void.

14 49. Because an allowance for the property tax expense of Arizona Water is included in the
15 Company's rates and will be collected from its customers, the Commission seeks assurances from the
16 Company that any taxes collected from ratepayers have been remitted to the appropriate taxing
17 authority. It has come to the Commission's attention that a number of water companies have been
18 unwilling or unable to fulfill their obligation to pay the taxes that were collected from ratepayers,
19 some for as many as twenty years. It is reasonable, therefore, that as a preventative measure Arizona
20 Water annually file, as part of its annual report, an affidavit with the Utilities Division attesting that
21 the company is current in paying its property taxes in Arizona.

22 CONCLUSIONS OF LAW

23 1. Arizona Water is a public service corporation within the meaning of Article XV of the
24 Arizona Constitution and A.R.S. §40-281 *et seq.*

25 2. The Commission has jurisdiction over Arizona Water and the subject matter of the
26 application.

27 3. Notice of the application was provided in accordance with law.

28 4. There is a public need and necessity for water utility service and this requires issuance

1 of an Order Preliminary to the approval of an extension of Arizona Water's CC&N authorizing it to
2 construct, operate and maintain facilities to furnish water service in Parcel 8, described in Exhibit A.

3 5. Arizona Water is a fit and proper entity to receive an Order Preliminary to the
4 extension of its water CC&N to include the service area more fully described in Exhibit A attached
5 hereto.

6 6. The application by Arizona Water to extend its CC&N to the area described in Exhibit
7 A should be granted subject to an Order Preliminary being issued prior to a CC&N subject to
8 obtaining a franchise or other consent to operate within the municipal boundary of the City of Eloy
9 within one year of the date of this Decision.

10 7. There is a public need and necessity for water utility service in the proposed extension
11 areas described in Exhibit B².

12 8. Arizona Water is a fit and proper entity to receive an extension of its water CC&N to
13 include the service areas more fully described in Exhibit B attached hereto, subject to compliance
14 with the conditions set forth above.

15 **ORDER**

16 IT IS THEREFORE ORDERED that pursuant to A.R.S. § 40-282(D), this Order Preliminary
17 to the issuance of the Certificate of Convenience and Necessity is granted and upon the granting of a
18 franchise or other consent to operate within the municipal boundary of Eloy, Arizona Water
19 Company shall file a motion in this docket for the issuance of a Certificate of Convenience and
20 Necessity authorizing it to construct, maintain and operate facilities to provide water service to the
21 public in the area more fully described in Exhibit A.

22 IT IS FURTHER ORDERED that upon the motion of Arizona Water Company and
23 verification of satisfaction of the requirements for the issuance of the Certificate of Convenience and
24 Necessity for the area described in Exhibit A, Staff shall prepare and docket an Order that grants the
25 Certificate of Convenience and Necessity for Commission approval.

26 IT IS FURTHER ORDERED that in the event Arizona Water Company does not obtain a
27

28 ² Parcels 1, 3, 4, 5, 6, and 7.

1 franchise or other consent to provide water utility service to the area described in Exhibit A within
2 one year of the date of this Decision, then the Order Preliminary approved herein shall be deemed
3 null and void. In such event, Staff shall file a memorandum to close this docket.

4 IT IS FURTHER ORDERED that the application of Arizona Water Company extension of its
5 water Certificate of Convenience and Necessity, to include the areas described in Exhibit B attached
6 hereto and incorporated herein by reference be, and is hereby approved, subject to the conditions set
7 forth in the following Ordering Paragraphs.

8 IT IS FURTHER ORDERED that Arizona Water Company shall charge its authorized rates
9 and charges in the extension area.

10 IT IS FURTHER ORDERED that the Commission's Decision granting the requested CC&N
11 extension be considered null and void if Arizona Water Company fails to meet the conditions
12 contained in the following three Ordering Paragraphs within the time specified.

13 IT IS FURTHER ORDERED that Arizona Water Company file with Docket Control, as a
14 compliance item in this docket, a Notice of Filing indicating Arizona Water Company has submitted
15 for Staff's review and approval, a copy of the fully executed main extension agreements for water
16 facilities for each parcel within the extension area, except for Parcel 1, within two years of this
17 Decision.

18 IT IS FURTHER ORDERED that Arizona Water Company file with Docket Control, as a
19 compliance item in this docket, a copy of the Arizona Department of Environmental Quality
20 Approval to Construct for the facilities needed to serve each of the Parcels within the requested areas,
21 except for Parcel 1, within two years of this Decision.

22 IT IS FURTHER ORDERED that Arizona Water Company file with Docket Control, as a
23 compliance item in this docket, a copy of the developers' Certificates of Assured Water Supply for
24 each of the Parcels within the requested areas, except for Parcel 1, stating that there is adequate water
25 supply, where applicable or when required by statute, within two years of this Decision.

26 ...

27 ...

28 ...

1 IT IS FURTHER ORDERED that Arizona Water shall annually file as part of its annual
2 report, an affidavit with the Utilities Division attesting that the Company is current in paying its
3 property taxes in Arizona.

4 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.
6
7

8 CHAIRMAN

COMMISSIONER

9
10 COMMISSIONER

COMMISSIONER

COMMISSIONER

11
12 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
13 Director of the Arizona Corporation Commission, have
14 hereunto set my hand and caused the official seal of the
Commission to be affixed at the Capitol, in the City of Phoenix,
this ____ day of _____, 2006.

15
16 BRIAN C. McNEIL
EXECUTIVE DIRECTOR

17
18 DISSENT _____

19
20 DISSENT _____

21 AB:mj
22
23
24
25
26
27
28

1 SERVICE LIST FOR: Arizona Water Company

2 DOCKET NO.: W-01445A-05-0469

3 Robert W. Geake, Vice President and General Counsel
4 Arizona Water Company
5 P.O. Box 29006
Phoenix, AZ 85038-9006

6 Thomas H. Campbell
7 Michael T. Hallam
8 LEWIS AND ROCA
40 N. Central Ave.
Phoenix AZ 85004

9 Garye L. Vasquez
10 Cooper, Vasquez & Rueter, LLP
PO Box 15005
Casa Grande AZ 85230-5005

11 Christopher Kempley, Chief Counsel
12 Legal Division
ARIZONA CORPORATION COMMISSION
13 1200 West Washington Street
Phoenix, Arizona 85007

14 Ernest G. Johnson, Director
15 Utilities Division
ARIZONA CORPORATION COMMISSION
16 1200 West Washington Street
Phoenix, Arizona 85007

PARCEL EIGHT

The Northeast quarter of the Northeast quarter of Section 20, Township 8 South, Range 7 East of the Gila and Salt River Base and Meridian, Pinal County, Arizona.

W:\AWC EXHIBITS\CC&N\2005\CGICCN LEGAL DESCRIPTION MASTER EXHIBIT CG.DOC
CB:CB | 07:56 | 6/9/05

EXHIBIT A

DECISION NO. _____

PARCEL ONE

Sections 1 and 12 of Township 7 South, Range 4 East of the Gila and Salt River Base and Meridian, Pinal County, Arizona. **Together With:**

Sections 5, 6, 7, and 8 of Township 7 South, Range 5 East of the Gila and Salt River Base and Meridian, Pinal County, Arizona. **Together With:**

The Northeast quarter and the South half of Section 32, Township 6 South, Range 5 East of the Gila and Salt River Base and Meridian, Pinal County, Arizona.

PARCEL THREE

All of Section 36, Township 7 South, Range 6 East of the Gila and Salt River Base and Meridian, Pinal County, Arizona.

PARCEL FOUR

That portion of Lots 1, 2, 3, 4, 5, 6, and 7 and the Southeast quarter of the Northwest quarter and the Southwest quarter of the Northeast quarter and the East half of the Southwest quarter of Section 6, Township 7 South, Range 7 East of the Gila and Salt River Base and Meridian, Pinal County, Arizona, described as follows:

BEGINNING at the Northeast corner of said Section 6, also being the Northeast corner of said Lot 1;

Thence South 00 Degrees 46 Minutes 20 Seconds East, along the East line of said Lot 1, a distance of 589.31 feet to the existing field location of the North edge of the Florence-Casa Grande Canal;

Thence along said North edge, the following 15 courses and distances;

Thence North 89 Degrees 47 Minutes 23 Seconds West, 403.39 feet;

Thence South 63 Degrees 13 Minutes 34 Seconds West, 119.11 feet;

Thence South 36 Degrees 20 Minutes 31 Seconds West, 586.88 feet;

Thence South 27 Degrees 15 Minutes 22 Seconds West, 233.24 feet.;

Thence South 89 Degrees 56 Minutes 56 Seconds West, 356.22 feet;

Thence South 00 Degrees 54 Minutes 57 Seconds East, 668.72 feet;

Thence South 34 Degrees 10 Minutes 22 Seconds West, 136.77 feet;

Thence South 53 Degrees 59 Minutes 16 Seconds West, 122.25 feet;
 Thence South 69 Degrees 44 Minutes 07 Seconds West, 1217.20 feet;
 Thence South 01 Degrees 03 Minutes 35 Seconds East, 55.06 feet;
 Thence North 89 Degrees 58 Minutes 48 Seconds West, 150.00 feet;
 Thence South 61 Degrees 08 Minutes 49 Seconds West, 150.07 feet;
 Thence South 51 Degrees 09 Minutes 27 Seconds West, 2015.19 feet;
 Thence South 60 Degrees 17 Minutes 26 Seconds West, 190.09 feet;
 Thence South 68 Degrees 41 Minutes 00 Seconds West, 572.72 feet to the West line of said Lot 7;
 Thence North 01 Degrees 17 Minutes 36 Seconds West, 1639.99 feet to the West quarter corner of said Section 6;
 Thence North 00 Degrees 39 Minutes 31 Seconds West, 2651.27 feet to the Northwest corner of said Section 6;
 Thence North 89 Degrees 59 Minutes 58 Seconds East, 2568.10 feet to the North quarter corner of said section 6;
 Thence North 90 Degrees 00 Minutes 00 Seconds East, 2667.57 feet to the Northeast corner of said Section 6 and the POINT OF BEGINNING.

PARCEL FIVE

The West half of the Northeast quarter of Section 27, Township 5 South Range 6 East of the Gila and Salt River Base and Meridian, Pinal County, Arizona.

PARCEL SIX

The Northwest quarter of Section 3, Township 6 South, Range 7 East of the Gila and Salt River Base and Meridian, Pinal County, Arizona.

PARCEL SEVEN

A portion of the Southeast quarter of Section 3, Township 6 South, Range 7 East of the Gila and Salt River Base and Meridian, Pinal County, Arizona, described as follows:

Commencing at the East quarter corner of said Section 3, a rebar with aluminum cap;
 Thence South 89 Degrees 52 Minutes 39 Seconds West, along the North line of said Southeast quarter, a distance of 1328.87 feet to the Northeast corner of the West half of the Southeast quarter of said Section 3 and the POINT OF BEGINNING;
 Thence South 00 Degrees 16 Minutes 03 Seconds West, along the East line of said West half, a distance of 1368.45 feet to the North line of a El Paso Natural Gas Easement as described in Docket 556, Page 497, records of Pinal County;
 Thence South 89 Degrees 54 Minutes 46 Seconds West, along said North line, a distance of 1331.05 feet to the West line of said Southeast quarter;
 Thence North 00 Degrees 21 Minutes 34 Seconds East, along said West line, a distance of 1367.65 feet to the North line of said Southeast quarter;
 Thence North 89 Degrees 52 Minutes 39 Seconds East, along said North line, a distance of 1328.87 feet to the POINT OF BEGINNING. **Together With:**

DECISION NO. _____

A portion of the Southeast quarter of Section 3, Township 6 South, Range 7 East of the Gila and Salt River Base and Meridian, Pinal County, Arizona, described as follows:

BEGINNING at the East quarter corner of said Section 3, a rebar with aluminum cap;
Thence South 00 Degrees 10 Minutes 30 Seconds West, along the East line of the Southeast quarter of Section 3, a distance of 1394.23 feet to the North line of a El Paso Natural Gas Easement, as described in Docket 556, Page 497, records of Pinal County;
Thence South 89 Degrees 57 Minutes 44 Seconds West, along said North line, a distance of 1331.10 feet to the West line of the East half of said Southeast quarter of said Section 3;
Thence North 00 Degrees 16 Minutes 03 Seconds East, along said West line, a distance of 1392.26 feet to the Northwest corner of said East half, and the North line of said Southeast quarter;
Thence North 89 Degrees 52 Minutes 37 Seconds East, along said North line, a distance of 1328.86 feet to the POINT OF BEGINNING.

COMMISSIONERS
JEFF HATCH-MILLER - Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES



BRIAN C. McNEIL
Executive Secretary

ARIZONA CORPORATION COMMISSION

DATE: August 12, 2005
DOCKET NO: W-01445A-05-0358
TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Amy Bjelland. The recommendation has been filed in the form of an Order on:

ARIZONA WATER COMPANY
(Financing)

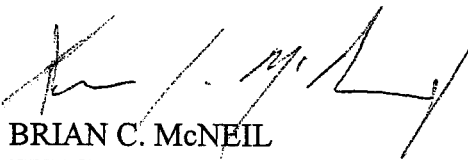
Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00 p.m.** on or before:

AUGUST 22, 2005

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

September 7 and 8, 2005

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Secretary's Office at (602) 542-3931.


BRIAN C. McNEIL
EXECUTIVE SECRETARY

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 JEFF HATCH-MILLER, Chairman
4 WILLIAM A. MUNDELL
5 MARC SPITZER
6 MIKE GLEASON
7 KRISTIN K. MAYES

8 IN THE MATTER OF THE APPLICATION OF
9 ARIZONA WATER COMPANY, AN ARIZONA
10 CORPORATION, FOR AN ORDER
11 AUTHORIZING THE EXECUTION OF A NEW
12 LOAN AGREEMENT OR AMENDMENT TO AN
13 EXISTING LOAN AGREEMENT AND THE
14 DELIVERY OF A PROMISSORY NOTE IN
15 CONNECTION THEREWITH.

DOCKET NO. W-01445A-05-0358

DECISION NO. _____

ORDER

11 Open Meeting
12 September 7 and 8, 2005
13 Phoenix, Arizona

14 **BY THE COMMISSION:**

15 Having considered the entire record herein and being fully advised in the premises, the
16 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

17 **FINDINGS OF FACT**

18 1. Arizona Water Company ("AWC" or "Company") is an Arizona Corporation that
19 owns and operates water systems providing water service to approximately 73,000 customers located
20 in Cochise, Coconino, Gila, Maricopa, Navajo, Pima, Pinal and Yavapai Counties in Arizona,
21 pursuant to authority granted by the Commission.

22 2. AWC is a wholly owned subsidiary of Utility Investment Company, which is a wholly
23 owned subsidiary of United Resources, Inc.

24 3. AWC charges rates approved in Decision Nos. 58120 (December 23, 1992) (Western
25 Group), 64282 (December 28, 2001) (Northern Group), and 66849 (March 19, 2004) (Eastern
26 Group).

27 4. On May 17, 2005, AWC filed the above-captioned application with the Commission
28 requesting authorization to extend its current line of credit by means of one or more amendments to
its existing loan agreement with Bank of America Arizona (the "Bank") through June 1, 2006 in an

1 amount not to exceed \$21.0 million.

2 5. On July 13, 2005, AWC filed certification that it caused notice of the application to be
3 published in the *Arizona Republic* on June 6, 2005, and in the *Arizona Daily Star/Tucson Citizen* on
4 June 6, 2005.

5 6. In the case of either a new loan agreement or an amendment to the existing loan
6 agreement, AWC expects the terms and conditions of the line of credit to remain the same as those
7 previously approved by the Commission. AWC established a \$9.0 million line of credit with the
8 Bank in 1997, which was approved in Decision No. 60272 (July 2, 1997). Decision No. 64996 (June
9 26, 2002) approved a loan to replace the 1997 loan agreement with a credit line of \$11.5 million
10 ("2002 Loan Agreement"). Decision No. 66104 (July 25, 2003) approved the First Amendment to
11 the 2002 Loan Agreement to increase the line of credit to \$15.0 million ("First Amendment"). The
12 First Amendment to the 2002 Loan Agreement expired on June 1, 2004. In Decision No. 67274
13 (October 5, 2004), the Commission authorized the Second Amendment to the 2002 Loan Agreement
14 ("Second Amendment"). Under the current terms of the Second Amendment AWC's ability to draw
15 on the \$15,000,000 line of credit expired on August 1, 2005. AWC stated that currently, the unpaid
16 principal balance of all advances under the 2002 Loan Agreement, as amended, bears interest at the
17 bank's reference rate minus .25 of a percentage point or at one of two optional rates¹ elected by the
18 Company as provided by the First Amendment.

19 7. AWC stated that it needs to increase the line of credit in order to finance future
20 construction, including arsenic treatment facilities and expansion of its water facilities and to
21 maintain and continue a high quality of service to its customers. The Company requests authority to
22 utilize the proceeds of the proposed line of credit to pay for construction of improvements and
23 additions to the Company's utility plant within the State of Arizona and for the reimbursement of
24 monies actually expended from the Company's treasury for such purposes.

25 8. AWC stated that as of March 31, 2005, the Company's short-term indebtedness was
26 \$2,100,000.

27
28 ¹ The optional rates are equal to or less than the bank's reference rate minus .25 of a percentage point.

1 9. On July 27, 2005 the Commission's Utilities Division Staff ("Staff") filed its Staff
2 Report on the application, recommending approval.

3 10. Staff stated that it examined AWC's 2004 construction budget and found the projects
4 to be both reasonable and appropriate.

5 11. Staff stated that under the terms of the proposed \$21.0 million line of credit through
6 June 1, 2006, all advances will bear interest during each calendar month under one of three rates
7 depending on the timing and amount of the draws. Staff stated that AWC may choose between one
8 of three options: 1) the Bank's reference rate minus 0.25 percentage points; 2) a fixed rate to be
9 determined by the Bank; or 3) an interest rate computed using a formula based on the London
10 Interbank Offered Rate ("LIBOR")².

11 12. Staff stated that as of June 10, 2005, the rates under the three options were as follows:

12 Option 1: Reference Rate: 5.75

13 Option 2: Fixed rate on amounts not less than \$500,000 for periods of 30, 60, 90, 120,
14 150 and 180 days:

- 15 a. 30 days = 4.21 percent
- 16 b. 60 days = 4.30 percent
- 17 c. 90 days = 4.40 percent
- 18 d. 120 days = 4.46 percent
- e. 150 days = 4.51 percent
- f. 180 days = 4.57 percent

19 Option 3: LIBOR formula rate on amounts not less than \$500,000 for periods of 30,
20 60, 90, 120, 150 and 180 days:

- 21 a. 30 days: $3.21625 + 1.0 = 4.21625$ percent
- 22 b. 60 days: $3.30813 + 1.0 = 4.30813$ percent
- 23 c. 90 days: $3.40000 + 1.0 = 4.40000$ percent
- 24 d. 120 days: $3.45563 + 1.0 = 4.45563$ percent
- e. 150 days: $3.51750 + 1.0 = 4.51750$ percent
- f. 180 days: $3.59188 + 1.0 = 4.59188$ percent

25 13. Staff performed an analysis of AWC's financial statements for the twelve-month
26 period ended December 31, 2004.

27 _____
28 ² Staff explained that the formula is the LIBOR divided by the sum of 1.00 minus the Reserve Percentage, and that components of the formula are defined and discussed in detail in the 2002 Agreement.

1 14. As of December 31, 2004, AWC's capital structure consisted of 0.45 percent short-
2 term debt,³ 24.12 percent long-term debt, and 75.43 percent equity.

3 15. Staff's analysis showed that if AWC were to draw the entire \$21.0 million from the
4 proposed line of credit, the resulting pro forma capital structure would consist of approximately 19.51
5 percent short-term debt,⁴ 19.51 percent long-term debt, and 60.99 percent equity.

6 16. The Debt Service Coverage ("DSC") ratio represents the number of times internally
7 generated cash will cover required principal and interest payments on long-term debt. A DSC ratio
8 greater than 1.0 means that operating cash flow is sufficient to cover debt obligations. A DSC less
9 than 1.0 means that debt service obligations cannot be met from operations and that another source of
10 funds is needed to avoid default.

11 17. The Times Interest Earned Ratio ("TIER") represents the number of times earnings will
12 cover interest expense on short-term and long-term debt. A TIER greater than 1.0 means that
13 operating income is greater than interest expense. A TIER of less than 1.0 is not sustainable in the
14 long term but does not necessarily mean that debt obligations cannot be met in the short term.

15 18. Based on its analysis of the Company's December 31, 2004 financial results, Staff
16 determined that the pro forma effect of AWC's proposed \$21.0 million line of credit if fully drawn
17 would be a lowering of the Company's TIER from 5.76 to 4.43 and a lowering of the Company's
18 DSC ratio from 6.88 to 5.52.⁵ Staff stated that the pro forma TIER and DSC ratios show that the
19 Company has adequate cash flow to make interest payments on the proposed line of credit.

20 19. Staff Engineering reviewed the Company's construction budget for the year 2005, and
21 stated that without making any "used and useful" determination from which any conclusions should
22 be inferred for ratemaking or rate base purposes, Staff found the estimated project costs provided by
23 the Company to be reasonable and appropriate.

24 20. Based on its review and analysis, Staff concluded that the proposed financing is for
25 lawful purposes, within AWC's powers as a corporation, compatible with the public interest,

26 ³ Includes \$0 in short-term debt and \$400,000 in current maturities on long-term debt as of December 31, 2004.

27 ⁴ Includes \$21,000,000 in short-term debt and \$400,000 in current maturities on long-term debt.

28 ⁵ The interest rate Staff used for short-term debt in its projection was 5.75 percent, the highest and most conservative interest rate option currently available under the proposed credit agreement. Staff's DSC calculation included no principal repayment on short-term debt and assumed that the principal would be refinanced when due.

1 consistent with sound financial practices and will not impair its ability to provide public service.
2 Staff recommended approval of the Company's application for authorization to enter into a loan
3 agreement with Bank of America Arizona for a line of credit through June 1, 2006, not to exceed
4 \$21.0 million, at an interest rate not to exceed the Bank's reference rate minus 0.25 percentage
5 points.

6 21. Staff stated that the Arizona Department of Environmental Quality ("ADEQ") and the
7 Maricopa Environmental Services Department ("MCESD") regulate the water systems operated by
8 the Company. Staff stated that based on data submitted by ADEQ and MCESD, it has determined
9 that the Company's systems are currently delivering water that meets water quality standards required
10 by Title 18, Chapter 4 of the Arizona Administrative Code.

11 22. The Company currently has a curtailment tariff on file that covers all its systems.

12 23. Staff's recommendations are reasonable and should be adopted.

13 **CONCLUSIONS OF LAW**

14 1. AWC is a public service corporation within the meaning of Article XV of the Arizona
15 Constitution and A.R.S. §§ 40-281, 40-282, 40-301 and 302.

16 2. The Commission has jurisdiction over AWC and the subject matter of the application.

17 3. Notice of the application was given in accordance with the law.

18 4. The recommendations set forth in Findings of Fact No. 20 are reasonable and should
19 be adopted.

20 5. The financing approved herein is for lawful purposes within AWC's corporate powers,
21 is compatible with the public interest, with sound financial practices, and with the proper
22 performance by AWC of service as a public service corporation, and will not impair AWC's ability to
23 perform that service.

24 6. The financing approved herein is for the purposes stated in the application and is
25 reasonably necessary for those purposes, and such purposes are not, wholly or in part, reasonably
26 chargeable to operating expenses or to income.

27 ...

28 ...

ORDER

IT IS THEREFORE ORDERED that the application of Arizona Water Company for authority to increase its current line of credit to \$21.0 million and to extend its current line of credit by means of one or more amendments to its existing loan agreement with Bank of America Arizona through June 1, 2006, or in the alternative, to enter into a new loan agreement for a \$21.0 million line of credit through June 1, 2006, is hereby approved.

IT IS FURTHER ORDERED that such authority is expressly contingent on Arizona Water Company's use of the proceeds for the purposes set forth in its application.

IT IS FURTHER ORDERED that Arizona Water Company is hereby authorized to engage in any transactions and execute any documents necessary to effectuate the authorization granted hereinabove.

IT IS FURTHER ORDERED that Arizona Water Company shall file with the Director of the Utilities Division, within 90 days of this Decision, a copy of all executed documents associated with the financing authorized herein.

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1 IT IS FURTHER ORDERED that the financing approved herein shall not guarantee or imply
2 any specific treatment of any capital additions for rate base or rate making purposes.

3 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

4 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

5
6
7 CHAIRMAN

COMMISSIONER

8
9 COMMISSIONER

COMMISSIONER

COMMISSIONER

10
11 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
12 Secretary of the Arizona Corporation Commission, have
13 hereunto set my hand and caused the official seal of the
14 Commission to be affixed at the Capitol, in the City of Phoenix,
15 this ____ day of _____, 2005.

16 BRIAN C. McNEIL
EXECUTIVE SECRETARY

17 DISSENT _____

18
19 DISSENT _____

20 AB:mj
21
22
23
24
25
26
27
28

1 SERVICE LIST FOR: ARIZONA WATER COMPANY

2 DOCKET NO.: W-01445A-05-0358

3 Robert Geake
4 Arizona Water Company
5 P.O. Box 29006
6 Phoenix, AZ 85038-9006

7 Christopher Kempley, Chief Counsel
8 Legal Division
9 ARIZONA CORPORATION COMMISSION
10 1200 West Washington Street
11 Phoenix, AZ 85007

12 Ernest G. Johnson, Director
13 Utilities Division
14 ARIZONA CORPORATION COMMISSION
15 1200 West Washington Street
16 Phoenix, AZ 85007
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COMMISSIONERS
JEFF HATCH-MILLER - Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES



BRIAN C. McNEIL
Executive Director

ARIZONA CORPORATION COMMISSION

DATE: FEBRUARY 27, 2006

DOCKET NO: T-01051B-05-0858

TO ALL PARTIES:

Enclosed please find the recommendation of Chief Administrative Law Amy Bjelland. The recommendation has been filed in the form of an Opinion and Order on:

**AUTOTEL/QWEST CORPORATION
(ARBITRATION)**


Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

MARCH 8, 2006

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

MARCH 15, 2006 and MARCH 16, 2006

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250. For information about the Open Meeting, contact the Executive Secretary's Office at (602) 542-3931.


BRIAN C. McNEIL
EXECUTIVE DIRECTOR

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 JEFF HATCH-MILLER, Chairman
4 WILLIAM A. MUNDELL
5 MARC SPITZER
6 MIKE GLEASON
7 KRISTIN K. MAYES

8 IN THE MATTER OF THE PETITION BY
9 AUTOTEL FOR ARBITRATION OF AN
10 INTERCONNECTION AGREEMENT WITH
11 QWEST CORPORATION PURSUANT TO
12 SECTION 252(B) OF THE
13 TELECOMMUNICATIONS ACT.

DOCKET NO. T-01051B-05-0858

DECISION NO. _____

OPINION AND ORDER

14 DATE OF HEARING: December 15, 2005 (procedural conference), February 6,
15 2006 (date scheduled for oral argument)

16 PLACE OF HEARING: Phoenix, Arizona

17 ADMINISTRATIVE LAW JUDGE: Amy Bjelland

18 APPEARANCES: Richard Oberdorfer, President of Autotel;
19 Gregory Monson, STOEL RIVES, LLP, on behalf of
20 Qwest Corporation; and
21 Maureen Scott, Staff Attorney, Legal Division, on
22 behalf of the Utilities Division of the Arizona
23 Corporation Commission.

24 **BY THE COMMISSION:**

25 On November 23, 2005, Autotel filed with the Arizona Corporation Commission
26 ("Commission") a Petition for Arbitration of an interconnection agreement with Qwest Corporation
27 ("Qwest") pursuant to A.A.C. R14-2-1505 and Section 252(b) of the Communications Act of 1934,
28 as amended by the Telecommunications Act of 1996 ("the Act").

On December 13, 2005, Qwest filed its Response to Petition for Arbitration, Including Motion
to Dismiss.

On December 15, 2005, pursuant to Procedural Order, a procedural conference was held.

On December 16, 2005, pursuant to Procedural Order, the timeclock in this matter was
suspended pending resolution of the legal objections to the Petition filed in this docket raised by
Qwest and Staff.

1 On February 6, 2006, pursuant to Procedural Order, a procedural conference was held for the
2 purpose of oral argument. All parties stated that they were satisfied with the existing record and
3 would not object to going forward solely on the pleadings filed in the docket.

4 On February 6, 2006, by Procedural Order, the parties were notified that unless an objection
5 was filed by February 15, 2006, requesting oral argument, the matter would be taken under
6 advisement based upon the existing pleadings. No objection was filed.

7 * * * * *

8 Having considered the entire record herein and being fully advised in the premises, the
9 Commission finds, concludes, and orders that:

10 **FINDINGS OF FACT**

11 1. Autotel is a Commercial Mobile Radio Service ("CMRS") provider. This filing
12 constitutes Autotel's second petition for arbitration of an interconnection agreement ("ICA") with
13 Qwest. Autotel previously filed for arbitration of an ICA with Qwest on February 27, 2004, naming
14 four issues for arbitration. The issues raised in the petition were determined by Decision No. 67408
15 (November 2, 2004) ("Approved Arbitration").

16 2. On December 9, 2004, Autotel filed with the Commission a Formal Complaint against
17 Qwest, alleging that the Qwest ICA did not comply with the Approved Arbitration. The Formal
18 Complaint docket was consolidated with the Approved Arbitration docket on February 11, 2005, and
19 after a procedural conference on February 23, 2005, the parties were able to resolve the dispute that
20 led Autotel to file the Formal Complaint. The ICA was filed with the Commission on March 16,
21 2005, and approved by operation of law on April 15, 2005 ("Approved ICA").

22 3. On May 5, 2005, Autotel filed a Complaint in the United States District Court for the
23 District of Arizona ("Federal Complaint") seeking damages for violations of due process and equal
24 protection, and alleging that the Approved Arbitration and Approved ICA do not comply with the
25 Act. The Federal Complaint remains pending. Qwest stated that Autotel has not requested any
26 services or interconnection with Qwest under the terms of the Approved ICA.

27 4. Qwest stated that it received a request from Autotel for negotiation of a second ICA in
28 Arizona on June 23, 2005. Citing the Approved ICA, Qwest declined to begin negotiations anew.

1 5. On November 23, 2005, Autotel filed with the Commission a Petition for Arbitration
2 of an Interconnection Agreement with Qwest pursuant to A.A.C. R14-2-1505 and Section 252(b) of
3 the Communications Act of 1934, as amended by the Act.

4 6. On December 13, 2005, Qwest filed its Response to Petition for Arbitration, Including
5 Motion to Dismiss.

6 7. On December 15, 2005, pursuant to Procedural Order, a procedural conference was
7 held.

8 8. On December 16, 2005, pursuant to Procedural Order, the timeclock in this matter was
9 suspended pending resolution of the legal objections to the Petition filed in this docket raised by
10 Qwest and Staff.

11 9. On December 20, 2005, Qwest filed a Motion and Consent of Timothy Berg for *Pro*
12 *Hac Vice* Admission of Gregory Monson on behalf of Qwest Corporation. This motion was granted
13 by procedural order on January 10, 2006.

14 10. On January 6, 2006, Autotel, Qwest and Staff filed Opening Briefs.

15 11. On January 17, 2006 Qwest filed a Request for the Commission to Take Official
16 Notice of Decisions in Other States.

17 12. On January 27, 2006, Autotel and Qwest filed their Reply Briefs.

18 13. On February 6, 2006, pursuant to Procedural Order, a procedural conference was held
19 for the purpose of oral argument. Richard Oberdorfer, President of Autotel, unexpectedly failed to
20 make an appearance. Monica Davis, office manager for Mr. Oberdorfer, was present via telephone
21 on behalf of Autotel, but stated that she is not an attorney. She stated that Mr. Oberdorfer was out of
22 the country. Counsel for Qwest and counsel for Staff were both present.

23 14. At the time appointed for oral argument, all parties stated that they were satisfied with
24 the existing record and would not object to going forward solely on the pleadings filed in the docket.

25 15. On February 6, 2006, by Procedural Order, the parties were notified that unless an
26 objection was filed by February 15, 2006, requesting oral argument, the matter would be taken under
27 advisement based upon the existing pleadings. No objection was filed.

28 16. On February 16, 2006, Fennemore Craig, attorneys for Qwest, filed a Notice of

1 Withdrawal, stating that Qwest has been advised of and consented to the withdrawal, and that
2 pleadings in the matter previously sent to Fennemore Craig should be directed to Norman Curtright.
3 Substitution of counsel was approved by procedural order on February 23, 2006.

4 17. Autotel set forth three issues for resolution by the Commission: (1) adoption of an
5 interconnection agreement; (2) state commission jurisdiction concerning Qwest's good faith
6 negotiation duties under Section 251(c)(1); and (3) review of state commission actions. Autotel
7 subsequently withdrew issues (2) and (3) in its January 6, 2006 filing. Because Autotel has
8 withdrawn the issues relating to state commission jurisdiction concerning Qwest's good faith
9 negotiation duties under Section 251(c)(1) and review of state commission actions, we do not address
10 those here.

11 18. Prior to reaching the issues enumerated by Autotel in this docket, we must address the
12 legal objections to the Petition for Arbitration raised by Qwest and Staff.

13 19. Both Qwest and Staff contended that to allow Autotel's Petition to go forward in this
14 docket would be inappropriate and, in effect, allow Autotel to ignore the Approved ICA. Qwest
15 further stated that the Petition does not comply with the requirements of 47 U.S.C. § 252(b)(2)(A)
16 and A.A.C. R14-2-1505.B.2, in that it fails to identify any unresolved and resolved issues.

17 20. Autotel's arguments are unpersuasive, and it has cited no legal authority that
18 overcomes, or adequately addresses, the arguments set forth by Qwest and Staff. Autotel argued that
19 it may file this petition pursuant to the Approved ICA, which states in Section XXII.B.1:

20 This Agreement shall be effective as of the effective date of commission
21 approval of this Interconnection Agreement and shall remain in effect for
22 a period of 3 years, and thereafter shall continue in force and effect unless
23 and until a new agreement, addressing all of the terms of this Agreement,
24 becomes effective between the Parties. The Parties agree to commence
negotiations on a new agreement no later than 2 ½ years after this
Agreement becomes effective. This Agreement shall become effective
pursuant to Sections 251 and 252 of the Act.

25 Autotel has not partaken of the Approved ICA; we decline to allow Autotel to seek refuge in the very
26 document that it has thus far failed to utilize. Further, the time period referred to in the Approved
27 ICA requires that negotiations commence by October 15, 2007. Even if we were disposed to accept
28

1 Autotel's argument, when we consider the current procedural posture of the Approved ICA, we find
2 it is premature to require Qwest to negotiate with Autotel. The Approved ICA has been in effect
3 since April 15, 2005. Autotel has been able to operate in Arizona pursuant to the Approved ICA
4 since that time, and remains able to operate should it so choose, as the Approved ICA remains in
5 effect.

6 21. In its Response to Autotel's Petition, Qwest gave detailed background regarding its
7 negotiations with Autotel in various western states; an arbitration petition filed against Qwest in
8 Utah; another filed by an Autotel affiliate, Western Radio Services, Inc. ("Western"), in Oregon; two
9 additional petitions filed in Colorado and New Mexico after the petition that began this docket. The
10 issues decided in the Approved Arbitration have likewise been arbitrated in each of these states.
11 Qwest stated that Western and Autotel refused to sign approved ICAs in Oregon, New Mexico and
12 Utah, but did sign the approved ICA with Qwest in Colorado.

13 22. Qwest further alleged in its Response to Autotel's Petition that it has requested that
14 Autotel voluntarily withdraw its petitions in Oregon and Utah; "Autotel and Western, however, have
15 refused to withdraw them unless Qwest will negotiate a new agreement that disregards the arbitration
16 decisions by the commissions in those states." Qwest's Response, fn. 1. We find this pattern of
17 behavior on Autotel's part troubling and essentially an attempt to wrest from Qwest an ICA more
18 favorable to Autotel than that already approved by this Commission via the legitimate arbitration
19 process.

20 23. Staff likewise stated its concern with Autotel's pattern of conduct, wherein Autotel, in
21 various states, has prematurely appealed arbitration decisions, refused to sign resulting ICAs and
22 sought to void state commission decisions by attempting to obtain a new ICA. Staff cited *Global*
23 *NAPS, Inc. v. Verizon New England, Inc.*, stating that "[p]ublic policy dictates that the arbitrated
24 agreement be upheld to provide incentive for the CLECs to negotiate in good faith and to conserve
25 administrative resources" (2004 WL 1059792 (C.Mass. 2004), *aff'd*, 395 F.3d 16 (1st Cir. 2005)).
26 We find Staff's reasoning and arguments very persuasive.

27 24. We find it significant that Autotel has initiated a subsequent arbitration proceeding
28 while the Federal Complaint is pending without ever operating under the Approved ICA. The 1st

Circuit found that “[i]n attempting to void the terms of a valid arbitration order, it is clear that Global NAPS is refusing to cooperate . . . in violation of its duty to negotiate in good faith.” *Global NAPS*, 396 F.3d at 25. The 1st Circuit also pointed out that the obligations of Section 252(b) apply to both parties to an arbitration.

25. We agree with Qwest and Staff that Autotel may not permissibly file a second petition for arbitration while the Approved ICA remains under judicial review. In our position as Arbitrator, the Commission has already ruled on the issues enumerated in Autotel's first petition. Qwest undertook to negotiate in good faith with Autotel the Approved ICA. Autotel has failed to make use of the Approved ICA while it pursues federal litigation in the matter. It appears that the Petition for Arbitration in the instant docket is an attempt to more quickly circumvent Autotel's own legitimate attempt to resolve the matter in the federal court. To allow Autotel to go forward with a second petition for arbitration is a waste of judicial and administrative resources considering that the Approved ICA remains pending in federal court and would render the arbitration process itself futile.

26. We therefore agree with Staff and Qwest that Autotel's Petition for Arbitration should be dismissed, and will do so with prejudice. We admonish Autotel for its waste of administrative and judicial resources in filing this Petition for Arbitration while the Federal Complaint remains pending and while it has failed to make use of its Approved ICA. Autotel has further wasted Commission resources in failing to send a suitable representative to appear for oral argument. Although this Commission does not regulate Autotel apart from its role in arbitration pursuant to the Act, it is our hope that Autotel will take this admonishment into account for purposes of future filings and its deportment in those proceedings.

CONCLUSIONS OF LAW

1. Qwest and Autotel are public service corporations within the meaning of Article XV of the Arizona Constitution.

2. Qwest and Autotel are telecommunications carriers within the meaning of 47 U.S.C. §§ 251 and 252.

3. The Commission has jurisdiction over Qwest and Autotel and the subject matter of the Petition pursuant to 47 U.S.C. §§ 251 and 252 and A.A.C. R14-2-1501.

ORDER

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

COMMISSIONER

COMMISSIONER

BRIAN C. McNEIL
EXECUTIVE DIRECTOR

DISSENT

DISSENT

1 SERVICE LIST FOR: AUTOTEL/QWEST

2 DOCKET NO.: T-01051B-05-0858

3 Richard L. Oberdorfer
4 114 N.E. Penn Avenue
5 Bend, OR 97701

6 Norman G. Curtright
7 QWEST CORPORATION
8 4041 N. Central Ave., 11th Floor
9 Phoenix, AZ 85012

10 Gregory B. Monson
11 STOEL RIVES, LLP
12 201 S. Main, Ste. 1100
13 Salt Lake City, UT 84111

14 Christopher Kempley, Chief Counsel
15 Legal Division
16 ARIZONA CORPORATION COMMISSION
17 1200 West Washington Street
18 Phoenix, AZ 85007

19 Ernest G. Johnson, Director
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COMMISSIONERS
JEFF HATCH-MILLER - Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES



BRIAN C. McNEIL
Executive Director

ARIZONA CORPORATION COMMISSION

DATE: FEBRUARY 27, 2006

DOCKET NO: T-01954B-05-0852

TO ALL PARTIES:

Enclosed please find the recommendation of Chief Administrative Law Amy Bjelland. The recommendation has been filed in the form of an Opinion and Order on:

AUTOTEL/CITIZENS UTILITIES RURAL COMPANY, INC.
(ARBITRATION)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

MARCH 8, 2006

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

MARCH 15, 2006 and MARCH 16, 2006

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Secretary's Office at (602) 542-3931.


BRIAN C. McNEIL
EXECUTIVE DIRECTOR

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 JEFF HATCH-MILLER, Chairman
4 WILLIAM A. MUNDELL
5 MARC SPITZER
6 MIKE GLEASON
7 KRISTIN K. MAYES

8 IN THE MATTER OF THE REQUEST OF
9 AUTOTEL FOR INTERCONNECTION SERVICES
10 AND NETWORK ELEMENTS WITH CITIZENS
11 UTILITIES RURAL COMPANY, INC. AND FOR
12 AN INQUIRY BY THE ARIZONA
13 CORPORATION COMMISSION AND
14 TERMINATION OF THE EXEMPTION OF
15 CITIZENS UTILITIES RURAL COMPANY, INC.
16 PURSUANT TO SECTION 251(f)(1)(B) OF THE
17 TELECOMMUNICATIONS ACT OF 1996.

DOCKET NO. T-01945B-05-0852

DECISION NO. _____

OPINION AND ORDER

12 DATE OF HEARING: December 12, 2005 (procedural conference); February
13 6, 2006 (date scheduled for oral argument)

13 PLACE OF HEARING: Phoenix, Arizona

14 ADMINISTRATIVE LAW JUDGE: Amy Bjelland

15 APPEARANCES: Richard Oberdorfer, President of Autotel;
16 Kevin Saville, Associate General Counsel, Citizens
17 Communications; and
18 Maureen Scott, Staff Attorney, Legal Division, on
19 behalf of the Utilities Division of the Arizona
20 Corporation Commission.

20 **BY THE COMMISSION:**

21 On November 21, 2005, Autotel filed with the Arizona Corporation Commission
22 ("Commission") a Notice of its Bona Fida Request for interconnection, services and network
23 elements with Citizens Utilities Rural Company, Inc. ("Citizens") pursuant to A.A.C. R14-2-1505
24 and Section 252(b) of the Communications Act of 1934, as amended by the Telecommunications Act
25 of 1996 ("the Act") and for an inquiry by the Commission and termination of the exemption of
26 Citizens pursuant to section 251(f)(1)(B) of the Telecommunications Act of 1996.

27 Pursuant to the Act, the Commission must act on the request within 120 days. The timeclock
28 was suspended by Procedural Order on December 16, 2005.

1 On December 12, 2005, pursuant to Procedural Order, a procedural conference was held.
2 Two legal issues were discussed at the conference. The first issue discussed was whether Autotel is
3 precluded from filing the application in this docket due to its pending appeal in Decision No. 67273
4 (October 5, 2004). The second issue relates to the rationale or necessity of terminating Citizens'
5 exemption under the Act with regard to the requested Interconnection Agreement.

6 On February 6, 2006, pursuant to Procedural Order, a procedural conference was held for the
7 purpose of oral argument. Richard Oberdorfer, President of Autotel, unexpectedly failed to make an
8 appearance. Monica Davis, office manager for Mr. Oberdorfer, was present via telephone on behalf
9 of Autotel, but stated that she is not an attorney. Counsel for Citizens and counsel for the
10 Commission's Utilities Division ("Staff") were both present.

11 At the time appointed for oral argument, Ms. Davis stated that Mr. Oberdorfer was out of the
12 country and Autotel was satisfied with the existing record and would not object to going forward
13 solely on the pleadings filed in the docket.

14 On February 6, 2006, by Procedural Order, the parties were notified that unless an objection
15 was filed by February 15, 2006, requesting oral argument, the matter would be taken under
16 advisement based upon the existing pleadings. No objection was filed.

17 * * * * *

18 Having considered the entire record herein and being fully advised in the premises, the
19 Commission finds, concludes, and orders that:

20 **FINDINGS OF FACT**

21 1. Autotel is a Commercial Mobile Radio Service ("CMRS") provider. This filing
22 constitutes Autotel's first filing subsequent to its previous arbitration of an Interconnection
23 Agreement ("ICA") with Citizens. Autotel previously filed a petition for arbitration of an ICA with
24 Citizens on March 27, 2003. The issues raised in the petition were determined by Decision No.
25 67273 (October 5, 2004). According to Citizens and Staff, Autotel has refused to sign the ICA that
26 incorporates the results of the arbitration.

27 2. On May 5, 20025, Autotel filed a Complaint in the United States District Court for the
28 District of Arizona ("Federal Complaint") alleging that the Commission's Decision and the Approved

1 ICA do not comply with the Act. Citizens and the Commission have filed motions to dismiss, which
2 remain pending with the Federal Complaint.

3 3. On November 21, 2005, Autotel filed with the Commission a Notice for
4 interconnection, services and network elements with Citizens pursuant to A.A.C. R14-2-1505 and
5 Section 252(b) of the Communications Act of 1934, as amended by the Act and for an inquiry by the
6 Commission and termination of the exemption of Citizens pursuant to section 251(f)(1)(B) of the
7 Telecommunications Act of 1996.

8 4. Pursuant to the Act, the Commission must act on the request within 120 days.¹

9 5. On December 12, 2005, pursuant to Procedural Order, a procedural conference was
10 held. Two legal issues were discussed at the conference. The first issue discussed was whether
11 Autotel is precluded from filing the application in this docket due to its pending appeal in Decision
12 No. 67273 (October 5, 2004). The second issue relates to the rationale or necessity of terminating
13 Citizens' exemption under the Act with regard to the requested Interconnection Agreement.

14 6. On January 6, 2006, Autotel, Citizens and Staff filed Opening Briefs. Citizens
15 included a Motion to Dismiss in its filing. Staff's Brief recommended that the Notice be dismissed.

16 7. On January 20, 2006, Citizens filed a Motion to Permit Kevin Saville, Esq. to Appear
17 *Pro Hac Vice* Pursuant to Rule 33, Rules of Supreme Court. This motion was granted by Procedural
18 Order on February 7, 2006.

19 8. On January 27, 2006, Autotel and Citizens filed Response Briefs.

20 9. On February 6, 2006, pursuant to Procedural Order, a procedural conference was held
21 for the purpose of oral argument. Richard Oberdorfer, President of Autotel, unexpectedly failed to
22 make an appearance.² Monica Davis, office manager for Mr. Oberdorfer, was present via telephone
23 on behalf of Autotel, but stated that she is not an attorney. Counsel for Citizens and counsel for Staff
24 were both present.

25 10. At the time appointed for oral argument, Ms. Davis stated that Mr. Oberdorfer was out

26 ¹ The timeclock was suspended by Procedural Order on December 16, 2005 pending resolution of the legal issues
27 determined herein.

28 ² Mr. Oberdorfer had specifically contacted counsel for Citizens on January 24, 2006 to request the opportunity to
participate telephonically. The request was received from counsel for Citizens and granted by the Administrative Law
Judge on February 1, 2006.

1 of the country and that Autotel was satisfied with the existing record and would not object to going
2 forward solely on the pleadings filed in the docket.

3 11. On February 6, 2006, by Procedural Order, the parties were notified that unless an
4 objection was filed by February 15, 2006, requesting oral argument, the matter would be taken under
5 advisement based upon the existing pleadings. No objection was filed.

6 12. Prior to reaching the issues enumerated by Autotel in this docket, we must address the
7 legal objections to the Notice raised by Citizens and Staff.

8 13. Both Citizens and Staff argue that Autotel's Notice is essentially an attempt to ignore
9 the previous Decision and attempt to void the Decision and resulting Approved ICA by unilaterally
10 initiating ICA negotiations under the Act. First, Citizens has not invoked the exemption provided to
11 it under § 251(f), which provides:

12 (f) EXEMPTIONS, SUSPENSIONS, AND MODIFICATIONS.

13 (1) EXEMPTION FOR CERTAIN RURAL TELEPHONE COMPANIES

14 (A) EXEMPTION. Subsection (c) of this section shall not apply to
15 a rural telephone company until (i) such company has received a bona fide
16 request for interconnection, services, or network elements, and (ii) the
17 State commission determines (under subparagraph (B)) that such request
18 is not unduly economically burdensome, is technically feasible, and is
19 consistent with section 254 (other than subsections (b)(7) and (c)(1)(D)
20 thereof).

21 (B) STATE TERMINATION OF EXEMPTION AND
22 IMPLEMENTATION SCHEDULE. The party making a bona fide
23 request of a rural telephone company for interconnection, services, or
24 network elements shall submit a notice of its request to the State
25 commission. The State commission shall conduct an inquiry for the
26 purpose of determining whether to terminate the exemption under
27 subparagraph (A). Within 120 days after the State commission receives
28 notice of the request, the State commission shall terminate the exemption
if the request is not unduly economically burdensome, is technically
feasible, and is consistent with section 254 (other than subsections (b)(7)
and (c)(1)(D) thereof). Upon termination of the exemption, a State
commission shall establish an implementation schedule for compliance
with the request that is consistent in time and manner with Commission
regulations.

26 Citizens and Staff have stated concisely in their Briefs why Autotel's Notice should be dismissed.
27 First, Autotel stated on the record that it wishes to interconnect with Citizens' network to provide
28 wireless service in Arizona and does not seek unbundled network elements. Second, interconnection

1 with Citizens' network is possible under the previous Decision and resulting ICA, which is binding
2 on both parties and may not be ignored by either party. Citizens pointed out that Autotel has failed to
3 address its previous lengthy interconnection arbitration proceeding, with which Autotel has chosen,
4 for unknown reasons, not to comply. Autotel's arguments are not persuasive, and it has cited no legal
5 authority that overcomes, or adequately addresses, the arguments set forth by Citizens and Staff.

6 14. We therefore agree with Staff and Citizens that Autotel's Notice should be dismissed,
7 and will do so with prejudice. We admonish Autotel for its waste of administrative and judicial
8 resources in filing this Notice while its Federal Complaint remains pending and while it has failed to
9 make use of its Approved ICA. Autotel has further wasted Commission resources in failing to send a
10 suitable representative to appear for oral argument. Although this Commission does not regulate
11 Autotel apart from its role in arbitration pursuant to the Act, it is our hope that Autotel will take this
12 admonishment into account for purposes of future filings and its deportment in those proceedings.

13 CONCLUSIONS OF LAW

14 1. Citizens and Autotel are public service corporations within the meaning of Article XV
15 of the Arizona Constitution.

16 2. Citizens and Autotel are telecommunications carriers within the meaning of 47 U.S.C.
17 §§ 251 and 252.

18 3. The Commission has jurisdiction over Citizens and Autotel and the subject matter of
19 the Petition pursuant to 47 U.S.C. §§ 251 and 252 and A.A.C. R14-2-1501.

20 4. The Commission's resolution of the issues pending herein is just and reasonable,
21 meets the requirements of the Act and regulations prescribed by the FCC pursuant to the Act, is
22 consistent with the best interests of the parties, and is in the public interest.

23 ...

24 ...

25 ...

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28 ...

ORDER

IT IS THEREFORE ORDERED that Autotel's Notice of its Bona Fida Request for interconnection, services and network elements with Citizens Utilities Rural Company, Inc. is hereby dismissed with prejudice.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this ____ day of _____, 2005.

BRIAN C. McNEIL
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

1 SERVICE LIST FOR:

AUTOTEL/CITIZENS

2 DOCKET NO.:

T-01945B-05-0852

3 Richard L. Oberdorfer
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14 Ernest G. Johnson, Director
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15 ARIZONA CORPORATION COMMISSION
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COMMISSIONERS
JEFF HATCH-MILLER - Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES



BRIAN C. McNEIL
Executive Director

ARIZONA CORPORATION COMMISSION

DATE: May 9, 2006

DOCKET NO.: SW-20403A-05-0586

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Amy Bjelland. The recommendation has been filed in the form of an Opinion and Order on:

BALTERRA SEWER CORPORATION

(CC&N)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00 p.m.** on or before:

MAY 18, 2006

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

MAY 31 AND JUNE 1, 2006

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.


BRIAN C. McNEIL
EXECUTIVE DIRECTOR

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 JEFF HATCH-MILLER, Chairman
4 WILLIAM A. MUNDELL
5 MARC SPITZER
6 MIKE GLEASON
7 KRISTIN K. MAYES

8 IN THE MATTER OF THE APPLICATION OF
9 BALTERRA SEWER CORP. FOR A
10 CERTIFICATE OF CONVENIENCE AND
11 NECESSITY TO PROVIDE WASTEWATER
12 SERVICE IN MARICOPA COUNTY, ARIZONA.

DOCKET NO. SW-20403A-05-0586

DECISION NO. _____

OPINION AND ORDER

9 DATE OF HEARING: April 10, 2006

10 PLACE OF HEARING: Phoenix, Arizona

11 ADMINISTRATIVE LAW JUDGE: Amy Bjelland

12 APPEARANCES: Jay L. Shapiro, FENNEMORE CRAIG, on behalf of
13 Applicant; and

14 Mr. Keith Layton, Staff Attorney, Legal Division, on
15 behalf of the Utilities Division of the Arizona
Corporation Commission.

16 **BY THE COMMISSION:**

17 On August 12, 2005, Balterra Sewer Corporation ("Balterra" or "Applicant") filed
18 with the Arizona Corporation Commission ("Commission") an Application for a Certificate of
19 Convenience and Necessity ("Certificate").

20 On September 9, 2005, the Commission's Utilities Division Staff ("Staff") filed an
21 Insufficiency Letter.

22 On November 15, 2005, Balterra filed documents in response to Staff's Insufficiency Letter as
23 well as its Notice of Filing Amended Legal Description and its Notice of Filing Direct Testimony of
24 James L. Condit.

25 On January 3, 2006, Balterra filed documents in response to a December 7, 2005 meeting
26 with Staff.

27 On January 23, 2006, Staff filed a Sufficiency Letter.

28 On April 10, 2006, a hearing was convened before a duly authorized Administrative Law

1 Judge of the Commission at its offices in Phoenix, Arizona. At the conclusion of the hearing, the
 2 matter was taken under advisement pending submission of a revised legal description of the area for
 3 which the Certificate was sought.

4 On April 14, 2006, Balterra filed its Notice of Filing Amended Legal Description.

5 * * * * *

6 Having considered the entire record herein and being fully advised in the premises, the
 7 Commission finds, concludes, and orders that:

8 FINDINGS OF FACT

9 1. Applicant is a corporation formed for the purpose of providing wastewater utility
 10 service to an approximately two-square mile area including the Balterra mixed-use
 11 residential/commercial development ("Development") and the Ruth Fisher Elementary and Tonopah
 12 Valley High School, both within the Saddle Mountain Unified School District ("District"). The
 13 requested area is in the vicinity of 411th Avenue and Camelback Road. At full build-out, Balterra
 14 proposes that the Development will require water and wastewater services for a maximum of 6,100
 15 equivalent residential units. Water service is expected to be provided to the requested area by the
 16 Water Utility of Greater Tonopah, with which Balterra witness Mr. Bradley A. Simons, Director of
 17 Utilities for JF Properties and Wastewater Management Coordinator for Balterra, stated Balterra is
 18 working closely.

19 2. Both Fronterra Village, the owner of the Development, and the District have requested
 20 wastewater service of Balterra.

21 3. At hearing, Mr. Simons testified that the District's schools are located to the east of
 22 the Development by about two and one-half miles. Currently Ruth Fisher Elementary is served by a
 23 wastewater package plant, and the District is constructing a new larger wastewater facility to replace
 24 the existing one and provide service to Tonopah Valley High School. Balterra and the District have
 25 conducted a preliminary analysis and have concluded that a public-private partnership in a regional
 26 wastewater system for the Southeast 208 Planning Area ("Planning Area")¹ will best serve the public

27 _____
 28 ¹ The Planning Area is bordered by I-10 to the south, Glendale Avenue to the north, 419th Avenue to the west and along
 the east by a jagged line running along, from north to south, 371st Avenue, 367th Avenue, and 363rd Avenue.

1 interest. This application is the first step toward a regional wastewater treatment facility as
2 contemplated by Balterra and the District for the larger Planning Area.

3 4. The proposed facility is a membrane bioreactor treatment plant designed to treat 2.2
4 million gallons per day ("MGD") of wastewater flow. It will be constructed and installed in three
5 phases to accommodate growth in the area. Treated effluent will be disposed of in a surface water
6 impoundment system consisting of a two-cell evaporation/transportation pond structure.

7 5. Phase I includes installation of a 0.275 MGD treatment plant, which will be extended
8 to 1.1 MGD in Phase II. Balterra expects Phase II to occur within six years of initial operation of the
9 plant. Balterra expects to serve 2,770 residential customers and one school customer within five
10 years. Balterra has estimated a cost of \$18.8 million for the wastewater treatment system through
11 Phase II of the development, equating to a unit cost of approximately \$17 per gallon of treated
12 effluent. Staff concluded that the proposed plant will have adequate capacity to serve customers
13 within the requested area and it is reasonable to expect that additional capacity can be developed
14 when needed.

15 6. Sewer companies are required by the Arizona Department of Environmental Quality
16 ("ADEQ") to obtain an Aquifer Protection Permit ("APP") and/or Arizona Pollutant Discharge
17 Elimination System ("AZPDES") permit before the plant can be placed in service. Mr. Simons
18 testified that a draft was submitted to ADEQ for review and approval and that Balterra has received
19 comments and submitted responses, but is still awaiting a determination of sufficiency from ADEQ.
20 Staff recommended that Balterra file with Docket Control, as a compliance item in this docket, a
21 copy of the notice issued by ADEQ that Applicant's APP and/or AZPDES has been approved no later
22 than October 31, 2007.

23 7. The Maricopa County Environmental Services Department ("MCESD") requires the
24 proposed treatment plant and sewage collection system to obtain Certificates of Approval to
25 Construct ("ATC") and Approval of Construction ("AOC"). Staff recommended that Balterra file
26 with Docket Control, as a compliance item in this docket, a copy of the ATC that MCESD will issue
27 for the proposed Phase I treatment plant no later than June 30, 2007. Staff further recommended that
28 Balterra file with Docket Control, as a compliance item in this docket, a copy of the AOC that

1 MCESD will issue for the proposed Phase I sewer collection system no later than October 31, 2007.
2 In Balterra's Response to Staff Report, Balterra objected to Staff's recommended deadline of October
3 31, 2007. Mr. Simons testified that given the timeframes as Balterra is aware of them, Balterra will
4 need until June 30, 2008 to file the AOC that MCESD will issue for the proposed Phase I sewer
5 collection system. At hearing, Dorothy Hains, Utility Engineer for the Commission, testified that
6 Staff wished to revise its recommendation to provide for a deadline of March 31, 2008. Mr. Simons
7 testified that this revised recommendation of March 31, 2008 to file the AOC is satisfactory to
8 Balterra.

9 8. Pursuant to Section 208 of the Federal Water Pollution Control Act, each state is
10 required to develop and implement area-wide water quality management plans for pollution control
11 purposes. The Maricopa Association of Governments ("MAG") has been designated as the area-wide
12 water quality management planning agency for Maricopa County and must approve an amendment to
13 the MAG Section 208 plan for the sewer system. Mr. Simons testified that the 208 plan amendment
14 has been drafted and submitted to MAG for review and approval. Balterra has submitted its request
15 to MAG for the amendment. Staff recommended that Balterra file with Docket Control, as a
16 compliance item in this docket, a copy of the MAG approved 208 plan no later than January 31,
17 2007. In Balterra's Response to Staff Report, Balterra objected to this recommended deadline. Mr.
18 Simons testified that given the timeframes as Balterra is aware of them, Balterra will need until April
19 30, 2007 to file a copy of the MAG approved 208 plan. However, at hearing, Ms. Hains testified that
20 Staff wished to revise its recommendation to provide for a deadline of April 30, 2007. Mr. Simons
21 testified that Staff's revised recommended deadline was satisfactory to Balterra.

22 9. Regarding the issue of the legal description of the proposed service area, Mr. Simons
23 testified that there was some discussion with Staff prior to the hearing that, due to an incorrect legal
24 description contained in Balterra's previous filings, the District site was not reflected as part of the
25 requested area in Staff's Report. Mr. Simons testified that the entire District site of 60 acres was
26 contemplated in the initial CC&N request of 1,170 acres, as the Balterra property itself is 1,110 acres,
27 leaving 60 acres for the school site. Balterra filed a late filed exhibit with an accurate legal
28 description including the District.

1 10. Mr. Simons testified that, other than the items cited in Balterra's Response to Staff
2 Report, which with the revisions noted above he found to be satisfactory, Applicant accepted all of
3 Staff's remaining recommendations and conditions, including the schedule of rates and charges.

4 11. Pursuant to the Commission's rules, Applicant provided five-year projections for plant
5 values, operating revenues and expenses, and number of customers. Such projections are necessary
6 to establish rates for new companies due to the lack of historical data. Staff reviewed Applicant's
7 projections and recommended that the Commission find that the projected fair value rate base will be
8 \$9,116,397 at the end of five years.

9 12. Balterra's proposed capital structure for the fifth year of operation is made up of
10 common equity of \$8,696,627 and advances in aid of construction of \$8,331,700 for total
11 capitalization of \$17,028,327. The resulting capital structure consists of 51.07 percent equity and
12 48.93 percent advances. Staff recommended approval of Balterra's capital structure.

13 13. Balterra's projected revenue is derived according to meter size and rates are proposed
14 as a monthly flat fee. For a 5/8 x 3/4 meter, the monthly rate is \$70. Staff reviewed and concurred
15 with Balterra's proposed rates except for the three inch meter size, which was inconsistent with the
16 other meter size percentages. Applicant's proposed rates and charges for initial wastewater service
17 and Staff's recommendations are as follows:

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<u>Minimum Monthly Flat Charge</u>	<u>Company Proposed</u>	<u>Staff Recommended</u>
5/8 x 3/4 inch	\$70.00	\$70.00
3/4 inch	105.00	105.00
One inch	175.00	175.00
1-1/2 inch	350.00	350.00
Two inch	560.00	560.00
Three inch	1,120.00	1,050.00
Four inch	1,750.00	1,750.00
Six inch	3,500.00	3,500.00
Treated Effluent per 1,000 gallons	\$0.62	\$0.62
Treated Effluent per acre foot	202.00	202.00
<u>Service Line Charge</u>		
Service Line connection Charge	\$350.00	\$350.00
Establishment of Service – Regular Hours	\$25.00	\$25.00
Establishment of Service – After Hours	40.00	40.00
(collected only if customer is sewer only)		
Re-establishment of Service (Within 12 Months)	*	*
Reconnection (delinquent) after hours	30.00	30.00
After hours service charge per hour	50.00	40.00
Customer Deposit	2x mo. bill	**
NSF Check Charge	15.00	15.00
Late Payment Charge		***
(per month on unpaid balance)		
* Per A.A.C. R14-2-603(D)		
** Per A.A.C. R14-2-603(B)		
*** 1.50% interest applied on the unpaid balance monthly		

14. Balterra expects to retain Pivotal Utility Management ("Pivotal") to provide the operations and management functions of the wastewater treatment facility and infrastructure. Pivotal operates and manages several Arizona utilities² and has applications currently under consideration by the Commission to purchase and finance the wastewater facilities at San Manuel.

15. Pivotal shares ownership and management with its affiliate, Santec Corporation ("Santec"). Far West Water and Sewer ("Far West") hired Santec in February 2001 to conduct repair and upgrade work at its wastewater facilities. On October 25, 2001, while entering a sewer collection tank to deflate a stopper in a gravity line, a Far West employee collapsed and died from asphyxiation. A Santec employee who entered the tank to rescue the Far West employee also died. On December

² These include Pine Meadows Utilities, LLC, Sweetwater Creek Utilities, Bensch Ranch Utilities, LLC, Cross Creek Ranch Water Company and Verde Santa Fe Wastewater Company.

23, 2002, a Grand Jury Indictment was filed in the Superior Court charging Far West and Santec with knowingly violating "a standard or regulation and that violation caused death to an employee." On June 30, 2005, Santec and the State of Arizona filed a plea agreement in the Superior Court, in which Santec agreed to plead guilty to a Class 6 felony, Violating Safety Standard and Causing Death of an Employee. This issue has been addressed by the Commission in the Coronado Utilities Certificate and financing cases³, Decision No. 68608 (March 23, 2006).

16. Staff stated that it believes the actions and inaction on the part of Santec at Far West regarding safety are relevant to this proceeding due to the common ownership and management of Santec and Pivotal. Therefore, Staff recommended that the Commission order that all operators, agents or employees including employees and agents of contractors and/or subcontractors constructing or operating the Balterra wastewater facilities must comply with all Arizona Department of Health and Safety ("ADOSH") requirements including any and all training required by ADOSH to operate wastewater facilities. Staff further recommended that the Commission order Balterra to file in Docket Control annually for three years, certification from ADOSH that Balterra has availed itself of ADOSH consultation services and certification that its operators, agents, employees, including employees and agents of contractors and/or subcontractors operating or constructing the Balterra wastewater facilities, have taken appropriate safety training.

17. Balterra does not object to Staff's recommendations concerning safety.

Staff's Recommendations

18. Based on its review, Staff recommended that the Commission find a projected fair value rate base in year five to be \$9,116,397, and that the decision in this matter should allow Balterra to collect from its customers a proportionate share of any privilege, sales or use tax for the sales of any effluent only. Staff also recommended that the Commission grant Balterra's Application for a Certificate to provide wastewater services, subject to the following conditions (including Staff's revisions as noted above):

(1) Balterra must charge Staff's recommended rates and charges as shown in

³ Docket Nos. SW-04305A-05-0086 and SW-04305A-05-0087.

1 Exhibit B, attached;

2 (2) Balterra must file in Docket Control a schedule of its approved rates and
3 charges within 30 days after this Decision is issued;

4 (3) Balterra must maintain its books and records in accordance with the National
5 Association of Regulatory Utility Commissioners ("NARUC");

6 (4) Balterra must use the wastewater depreciation rates by individual NARUC
7 category as delineated in Exhibit C, attached;

8 (5) Balterra must file with Docket Control, as a compliance item in this docket, a
9 copy of the notice issued by ADEQ that Balterra's APP and/or AZPDES has been approved no later
10 than October 31, 2007;

11 (6) Balterra must file with Docket Control, as a compliance item in this docket, a
12 copy of the MAG approved 208 Plan no later than April 30, 2007;

13 (7) Balterra must file with Docket Control, as a compliance item in this docket, a
14 copy of the ATC that MCESD will issue for the proposed Phase I treatment plant no later than June
15 30, 2007;

16 (8) Balterra must file with Docket Control, as a compliance item in this docket, a
17 copy of the AOC that MCESD will issue for the proposed Phase I sewer collection system no later
18 than March 31, 2008;

19 (9) Balterra must file documentation with Docket Control, as a compliance item
20 in this docket, a notification of service to its first customer within 15 days of serving its first
21 customer;

22 (10) Balterra must file a rate application no later than three months following the
23 fifth anniversary of the date it begins providing service to its first customer;

24 (11) Balterra's operators, agents, or employees, including employees and agents of
25 contractors and/or subcontractors operating or constructing the Balterra wastewater facilities, must
26 comply with all ADOSH requirements including any and all training required by ADOSH to operate
27 wastewater facilities; and

28 (12) On an annual basis, on the anniversary date of the Decision in this matter, for

three years, Balterra must file with Docket Control, as a compliance item in this docket, certification from ADOSH that it has availed itself of ADOSH consultation services and its operators, agents, or employees, including employees and agents of contractors and/or subcontractors operating or constructing the Balterra wastewater facilities have taken appropriate training.

19. Staff further recommended that the Commission's Decision granting Balterra's application for a Certificate be considered null and void, after due process, should Balterra fail to meet conditions (2), (5), (6), (7), or (8) within the time specified.

CONCLUSIONS OF LAW

1. Applicant is a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. §40-281 *et seq.*

2. The Commission has jurisdiction over Applicant and the subject matter of the application.

3. Notice of the application was provided in accordance with law.

4. There is a public need and necessity for wastewater utility service in the proposed service territory as set forth in Exhibit A attached hereto.

5. Applicant is a fit and proper entity to receive a wastewater CC&N to include the service area more fully described in Exhibit A attached hereto, subject to compliance with the conditions set forth above.

6. Staff's recommendation for approval of the application is reasonable and should be adopted.

ORDER

IT IS THEREFORE ORDERED that the application of Balterra Sewer Corporation for a Certificate of Convenience and Necessity to provide wastewater service to the area in Maricopa County, Arizona, as described in Exhibit A attached hereto, is approved.

IT IS FURTHER ORDERED that the projected fair value rate base in year five is estimated to be \$9,116,397.

IT IS FURTHER ORDERED that Balterra Sewer Corporation may collect from its customers a proportionate share of any privilege, sales or use tax for the sales of any effluent only.

1 IT IS FURTHER ORDERED that Balterra Sewer Corporation shall charge Staff's
2 recommended rates and charges as shown in Exhibit B, attached.

3 IT IS FURTHER ORDERED that Balterra Sewer Corporation shall maintain its books and
4 records in accordance with the National Association of Regulatory Utility Commissioners.

5 IT IS FURTHER ORDERED that Balterra Sewer Corporation shall use the wastewater
6 depreciation rates by individual National Association of Regulatory Utility Commissioners category
7 as delineated in Exhibit C, attached.

8 IT IS FURTHER ORDERED that Balterra Sewer Corporation shall file documentation with
9 Docket Control, as a compliance item in this docket, a notification of service to its first customer
10 within 15 days of serving its first customer.

11 IT IS FURTHER ORDERED that Balterra Sewer Corporation shall file a rate application no
12 later than three months following the fifth anniversary of the date it begins providing service to its
13 first customer.

14 IT IS FURTHER ORDERED that Balterra Sewer Corporation's operators, agents, employees
15 or operators, including employees and agents of contractors and/or subcontractors operating or
16 constructing the Balterra Sewer Corporation wastewater facilities, shall comply with all Arizona
17 Department of Health and Safety requirements including any and all training required by Arizona
18 Department of Health and Safety to operate wastewater facilities.

19 IT IS FURTHER ORDERED that Balterra Sewer Corporation, on an annual basis, on the
20 anniversary date of the Decision in this matter, for three years, shall file with Docket Control, as a
21 compliance item in this docket, certification from Arizona Department of Health and Safety that it
22 has availed itself of Arizona Department of Health and Safety consultation services and its operators,
23 agents, employees or operators, including employees and agents of contractors and/or subcontractors
24 operating or constructing the Balterra Sewer Corporation wastewater facilities have taken appropriate
25 training.

26 IT IS FURTHER ORDERED that this Decision shall be considered null and void, after due
27 process, should Balterra fail to meet the following conditions within the time specified.

28 IT IS FURTHER ORDERED that Balterra Sewer Corporation shall file with Docket Control a

1 schedule of its approved rates and charges within 30 days after this Decision is issued.

2 IT IS FURTHER ORDERED that Balterra Sewer Corporation shall file with Docket Control,
3 as a compliance item in this docket, a copy of the notice issued by the Arizona Department of
4 Environmental Quality that Balterra Sewer Corporation's Aquifer Protection Permit and/or Arizona
5 Pollutant Discharge Elimination System has been approved no later than October 31, 2007.

6 IT IS FURTHER ORDERED that Balterra Sewer Corporation shall file with Docket Control,
7 as a compliance item in this docket, a copy of the Maricopa Association of Governments approved
8 Section 208 Plan no later than April 30, 2007.

9 IT IS FURTHER ORDERED that Balterra Sewer Corporation shall file with Docket Control,
10 as a compliance item in this docket, a copy of the Approval to Construct that Maricopa County
11 Environmental Services Department will issue for the proposed Phase I treatment plant no later than
12 June 30, 2007.

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IT IS FURTHER ORDERED that Balterra Sewer Corporation shall file with Docket Control, as a compliance item in this docket, a copy of the Approval of Construction that Maricopa County Environmental Services Department will issue for the proposed Phase I sewer collection system no later than March 31, 2008.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this ____ day of _____, 2006.

BRIAN C. McNEIL
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

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SERVICE LIST FOR:

BALTERRA SEWER CORP.

DOCKET NO.:

SW-20403A-05-0586

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PROPERTY DESCRIPTION**BALTERRA**

THE DESCRIPTION FOR THAT PORTION OF THE PROPERTY DESCRIBED BELOW, LYING WITHIN SECTION 23, TOWNSHIP 2 NORTH, RANGE 7 WEST, GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, IS BASED ON AN ALTA/ACSM LAND TITLE SURVEY BY MORRISON MAIERLE, INCORPORATED, DATED SEPTEMBER 22, 2004.

THAT PORTION OF SECTION 19, TOWNSHIP 2 NORTH, RANGE 6 WEST, AND SECTION 24, TOWNSHIP 2 NORTH, RANGE 7 WEST, GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT AN ARIZONA DEPARTMENT OF TRANSPORTATION BRASS CAP AT THE SOUTHEAST CORNER OF SAID SECTION 19;

THENCE NORTH 89°28'08" WEST, ALONG THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 19, A DISTANCE OF 2,640.04 FEET TO A BRASS CAP AT THE SOUTH QUARTER CORNER OF SAID SECTION 19;

THENCE NORTH 89°28'43" WEST, ALONG THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 19, A DISTANCE OF 1,687.12 FEET TO A HALF INCH REBAR AND YELLOW CAP MARKED "DEA 40622" AT THE SOUTHEAST CORNER OF THAT CERTAIN TRACT OF LAND CONDEMNED FOR HIGHWAY AS RECORDED UNDER DOCKET NO. 7553, PAGE 749, RECORDS OF MARICOPA COUNTY, ARIZONA;

THENCE NORTH 00°31'17" EAST, ALONG THE EAST LINE OF THAT CERTAIN TRACT OF LAND CONDEMNED FOR HIGHWAY AS RECORDED UNDER DOCKET NO. 7553, PAGE 749, RECORDS OF MARICOPA COUNTY, ARIZONA, A DISTANCE OF 65.22 FEET TO AN ARIZONA DEPARTMENT OF TRANSPORTATION BRASS CAP;

THENCE NORTH 85°42'56" WEST, ALONG THE NORTH LINE OF THAT CERTAIN TRACT OF LAND CONDEMNED FOR HIGHWAY AS RECORDED UNDER DOCKET NO. 7553, PAGE 749, RECORDS OF MARICOPA COUNTY, ARIZONA, A DISTANCE OF 629.08 FEET TO AN ARIZONA DEPARTMENT OF TRANSPORTATION BRASS CAP;

THENCE NORTH 74°33'19" WEST, ALONG THE NORTH LINE OF THAT CERTAIN TRACT OF LAND CONDEMNED FOR HIGHWAY AS RECORDED UNDER DOCKET NO. 7553, PAGE 749, RECORDS OF MARICOPA COUNTY, ARIZONA, A DISTANCE OF 308.20 FEET TO A HALF INCH REBAR AND YELLOW CAP MARKED "DEA 40622" AT A POINT ON THE WEST LINE OF SAID SECTION 19, ALSO BEING THE NORTHEAST CORNER OF THAT CERTAIN TRACT OF LAND DEEDED FOR HIGHWAY AS RECORDED UNDER DOCKET NO. 6412, PAGE 55, RECORDS OF MARICOPA COUNTY, ARIZONA;

EXHIBIT A**DECISION NO.** _____

THENCE NORTH 74°32'33" WEST, ALONG THE NORTH LINE OF THAT CERTAIN TRACT OF LAND DEEDED FOR HIGHWAY AS RECORDED UNDER DOCKET NO. 6412, PAGE 55, RECORDS OF MARICOPA COUNTY, ARIZONA, A DISTANCE OF 1,142.11 FEET TO AN ARIZONA DEPARTMENT OF TRANSPORTATION BRASS CAP;

THENCE NORTH 74°32'55" WEST, ALONG THE NORTH LINE OF THAT CERTAIN TRACT OF LAND DEEDED FOR HIGHWAY AS RECORDED UNDER DOCKET NO. 6412, PAGE 55, RECORDS OF MARICOPA COUNTY, ARIZONA, A DISTANCE OF 1,300.16 FEET TO AN ARIZONA DEPARTMENT OF TRANSPORTATION BRASS CAP;

THENCE NORTH 74°32'56" WEST, ALONG THE NORTH LINE OF THAT CERTAIN TRACT OF LAND DEEDED FOR HIGHWAY AS RECORDED UNDER DOCKET NO. 6412, PAGE 55, RECORDS OF MARICOPA COUNTY, ARIZONA, A DISTANCE OF 294.08 FEET TO A ONE HALF INCH REBAR ON THE WEST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 24;

THENCE NORTH 00°32'56" EAST, ALONG THE WEST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 24, A DISTANCE OF 1751.55 FEET TO A ONE INCH REBAR AT THE CENTER OF SAID SECTION 24;

THENCE NORTH 89°27'44" WEST, ALONG THE SOUTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 24, A DISTANCE OF 1321.24 FEET TO A FIVE EIGHTHS INCH REBAR AT THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 24;

THENCE NORTH 00°33'08" EAST, ALONG THE WEST LINE OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 24, A DISTANCE OF 132.00 FEET TO A HALF INCH REBAR ON THE NORTH LINE OF THE SOUTH 132.00 FEET OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 24;

THENCE NORTH 89°27'44" WEST, ALONG THE NORTH LINE OF THE SOUTH 132.00 FEET OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 24, A DISTANCE OF 660.61 FEET TO A HALF INCH REBAR MARKED "DON MILLER, LS 15335" AT THE WEST LINE OF THE EAST HALF OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 24;

THENCE NORTH 00°33'16" EAST, ALONG THE WEST LINE OF THE EAST HALF OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 24, A DISTANCE OF 528.12 FEET TO A HALF INCH REBAR MARKED "DON MILLER, LS 15335" AT THE SOUTHEAST CORNER OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 24;

THENCE NORTH 89°27'40" WEST, ALONG THE SOUTH LINE OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 24, A DISTANCE OF 660.59 FEET TO A HALF INCH REBAR AND YELLOW CAP MARKED "DEA 40622" AT THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 24;

THENCE NORTH 00°33'24" EAST, ALONG THE WEST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 24, A DISTANCE OF 660.13 FEET TO A HALF INCH REBAR AT THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 24;

THENCE SOUTH 89°27'36" EAST, ALONG THE NORTH LINE OF THE SOUTH HALF OF THE NORTHWEST QUARTER OF SAID SECTION 24, A DISTANCE OF 2642.28 FEET TO A FIVE EIGHTHS INCH REBAR AT THE SOUTHEAST CORNER OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 24;

THENCE NORTH 00°32'53" EAST, ALONG THE EAST LINE OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 24, A DISTANCE OF 1320.15 FEET TO A HALF INCH REBAR AT THE NORTH QUARTER CORNER OF SAID SECTION 24;

THENCE SOUTH 89°31'19" EAST, ALONG THE NORTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 24, A DISTANCE OF 2645.96 FEET TO A GLO BRASS CAP AT THE NORTHEAST CORNER OF SAID SECTION 24;

THENCE SOUTH 00°33'36" WEST, ALONG THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 24, A DISTANCE OF 1320.00 FEET TO A HALF INCH REBAR AT THE SOUTH LINE OF THE NORTH 1320.00 FEET OF THE NORTHWEST QUARTER OF SAID SECTION 19;

THENCE SOUTH 89°29'19" EAST, ALONG THE SOUTH LINE OF THE NORTH 1320.00 FEET OF THE NORTHWEST QUARTER OF SAID SECTION 19, A DISTANCE OF 1320.00 FEET TO A HALF INCH REBAR AT THE SOUTHEAST CORNER OF THE WEST 1320.00 FEET OF THE NORTH 1320.00 FEET OF THE NORTHWEST QUARTER OF SAID SECTION 19;

THENCE NORTH 00°33'36" EAST, ALONG THE EAST LINE OF THE WEST 1320.00 FEET OF THE NORTHWEST QUARTER OF SAID SECTION 19, A DISTANCE OF 1320.00 FEET TO A HALF INCH REBAR ON THE NORTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 19, ALSO BEING THE NORTHEAST CORNER OF THE WEST 1320.00 FEET OF THE NORTH 1320.00 FEET OF THE NORTHWEST QUARTER OF SAID SECTION 19;

THENCE SOUTH 89°29'19" EAST, ALONG THE NORTH LINE OF THE OF THE NORTHWEST QUARTER OF SAID SECTION 19, A DISTANCE OF 1286.27 FEET TO A GLO BRASS CAP AT THE NORTH QUARTER CORNER OF SAID SECTION 19;

THENCE SOUTH 89°29'54" EAST, ALONG THE NORTH LINE OF THE OF THE NORTHEAST QUARTER OF SAID SECTION 19, A DISTANCE OF 2643.72 FEET TO A REBAR WITH ALUMINUM CAP MARKED "LS 36563, 2004" AT THE NORTHEAST CORNER OF SAID SECTION 19;

THENCE SOUTH 00°32'10" WEST, ALONG THE EAST LINE OF THE OF THE NORTHEAST QUARTER OF SAID SECTION 19, A DISTANCE OF 2643.21 FEET TO A REBAR WITH ALUMINUM CAP MARKED "LS 36563, 2004" AT THE EAST QUARTER CORNER OF SAID SECTION 19;

THENCE SOUTH 00°32'12" WEST, ALONG THE EAST LINE OF THE OF THE SOUTHEAST QUARTER OF SAID SECTION 19, A DISTANCE OF 2643.45 FEET TO AN ARIZONA DEPARTMENT OF TRANSPORTATION BRASS CAP AT THE SOUTHEAST CORNER OF SAID SECTION 19 AND THE POINT OF BEGINNING;

TOGETHER WITH THE NORTHEAST QUARTER OF SECTION 23, TOWNSHIP 2 NORTH, RANGE 7 WEST, GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA,

BEING ALSO DESCRIBED AS FOLLOWS:

BEGINNING AT A HALF-INCH REBAR AT THE NORTHEAST CORNER OF SECTION 23, TOWNSHIP 2 NORTH, RANGE 7 WEST, GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA;

THENCE SOUTH 00°33'24" WEST, ALONG THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 23, A DISTANCE OF 2640.55 FEET TO A GLO BRASS CAP AT THE EAST QUARTER CORNER OF SAID SECTION 23;

THENCE NORTH 89°26'32" WEST, ALONG THE SOUTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 23, A DISTANCE OF 2636.57 FEET TO A HALF INCH REBAR WITH TAG MARKED "L.S. 12218" AT THE CENTER OF SAID SECTION 23;

THENCE NORTH 00°35'09" EAST, ALONG THE WEST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 23, A DISTANCE OF 2641.17 FEET TO A GLO BRASS CAP AT THE NORTH QUARTER CORNER OF SAID SECTION 23;

THENCE SOUTH 89°25'44" EAST, ALONG THE NORTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 23, A DISTANCE OF 2635.23 FEET TO A GLO BRASS CAP AT THE NORTHEAST CORNER OF SAID SECTION 23 AND THE POINT OF BEGINNING.

EXCEPT THAT PORTION OF THE SOUTHWEST QUARTER OF SAID SECTION 19 DESCRIBED AS FOLLOWS:

COMMENCING AT A BRASS CAP FOUND AT THE SOUTH QUARTER CORNER OF SAID SECTION 19, FROM WHICH AN ARIZONA DEPARTMENT OF TRANSPORTATION BRASS CAP AT THE SOUTHEAST CORNER OF SAID SECTION 19 BEARS SOUTH 89°28'08" EAST, A DISTANCE OF 2640.04 FEET; THENCE NORTH 89°28'43" WEST, ALONG THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 19, A DISTANCE OF 1482.82 FEET; THENCE NORTH 00°31'17" EAST, A DISTANCE OF 40.00 FEET TO A HALF IN REBAR AT A POINT ON A LINE LYING 40.00 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 19 AND THE TRUE POINT OF BEGINNING;

THENCE CONTINUING NORTH 00°31'17" EAST, A DISTANCE OF 200.00 FEET TO A HALF IN REBAR AT A POINT ON A LINE LYING 240.00 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 19;

THENCE SOUTH 89°28'43" EAST, ALONG SAID LINE LYING 240.00 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 19, A DISTANCE OF 200.00 FEET TO A HALF IN REBAR;

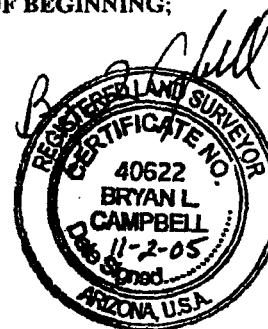
THENCE SOUTH 00°31'17" WEST, A DISTANCE OF 200.00 FEET TO A HALF IN REBAR AT A POINT ON SAID LINE LYING 40.00 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 19;

THENCE NORTH 89°28'43" WEST, ALONG SAID LINE LYING 40.00 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 19, A DISTANCE OF 200.00 FEET TO A HALF IN REBAR AT THE POINT OF BEGINNING;

SITUATE IN THE COUNTY OF MARICOPA, STATE OF ARIZONA.

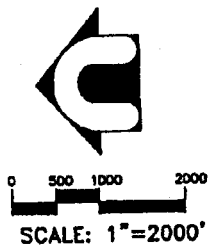
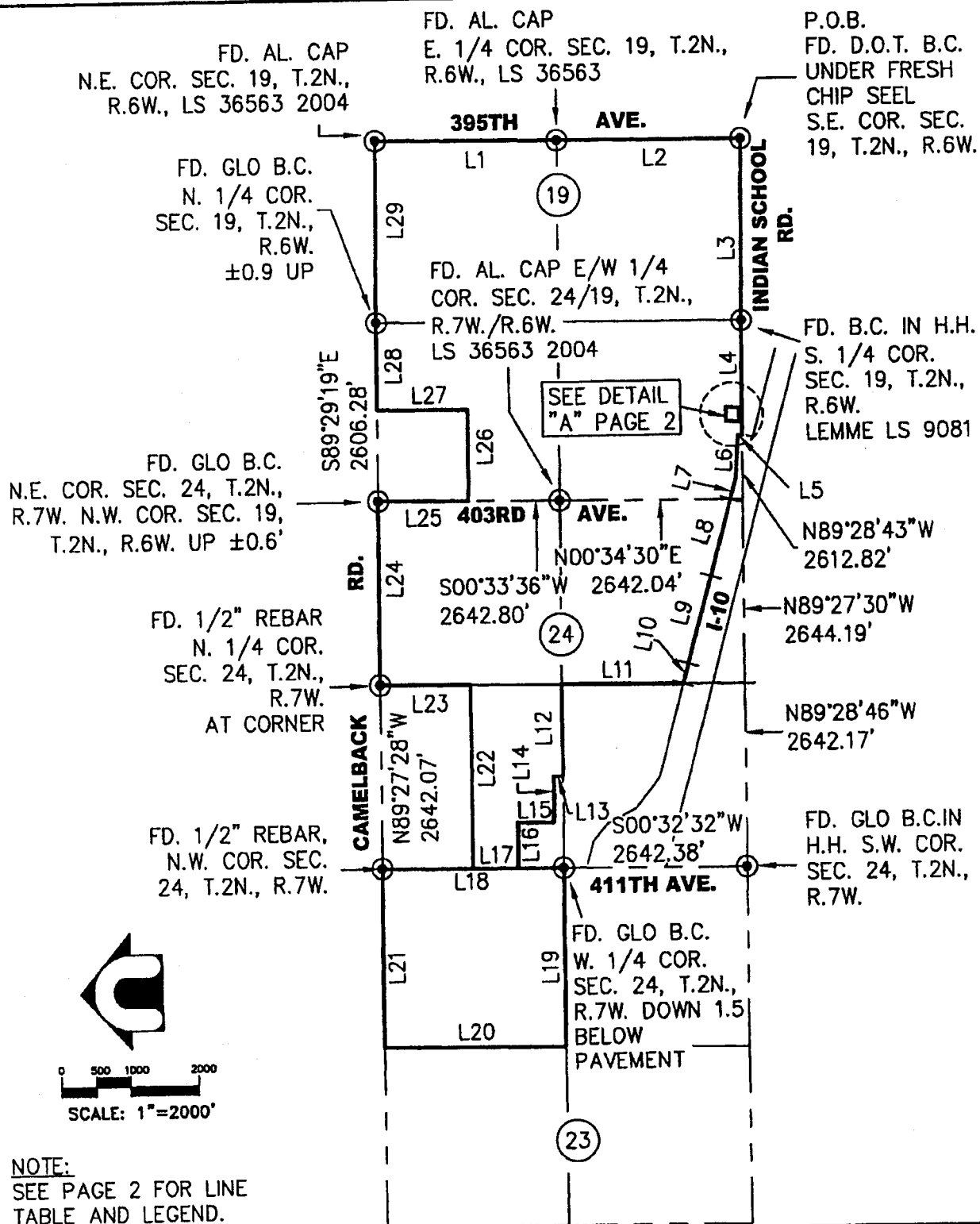
CONTAINS 1,110.083 ACRES MORE OR LESS. (GROSS)

CONTAINS 1,082.750 ACRES MORE OR LESS. (NET)




N:\C\YPG0000-0002\CYPG00002-1\DWG\SV\BALTERRA PROPERTY.doc

DECISION NO. _____



NOTE:
SEE PAGE 2 FOR LINE
TABLE AND LEGEND.

SCALE: 1"=2000'	BOUNDARY EXHIBIT FOR BALTERRA	 DAVID EVANS AND ASSOCIATES INC. 2141 East Highland Avenue, Suite 200 Phoenix Arizona 85016 Phone: 602.678.5151	DRAWN BY: APC
SHEET 1 OF 2			CHECKED BY:
JOB NO.: CYFG0002			DATE: 4/05

DECISION NO. _____

DESCRIPTION

SADDLE MOUNTAIN UNIFIED SCHOOL DISTRICT PROPERTY

*The following description is based on information available from
the Maricopa County Assessors Web Site and Warranty Deeds
Recorded under Recording No.'s 89245589 and 050777775.*

The northwest quarter of the northeast quarter and the west half of the northeast quarter of the northeast quarter of Section 28, Township 2 North, Range 6 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

Except any portion lying within the dedicated right of way for Indian School Road per road declaration recorded in Docket 3124, Pages 573-575, Records of Maricopa County, Arizona;

Except any portion lying within that property described in document recorded under Recording No. 870106857 Records of Maricopa County, Arizona.

Contains 57.6 Acres more or less.

P:\JJFPI00000002\0600\INFO\SV\605SV Legal Descriptions\School Description.doc

DECISION NO. _____

Balterra Sewer Corporation
Docket Number SW-020403A-05-0586

Schedule CRM-WW-5

RATE DESIGN-WASTEWATER

	Company Proposed Rates	Staff Recommended Rates
<u>Minimum Monthly Flat Charge</u>		
5/8 x3/4 inch	\$70.00	\$70.00
3/4 inch	105.00	105.00
one inch	175.00	175.00
1-1/2 inch	350.00	350.00
two inch	560.00	560.00
three inch	1,120.00	1,050.00
four inch	1,750.00	1,750.00
six inch	3,500.00	3,500.00
Treated Effluent per 1,000 gallons	0.62	0.62
Teated Effluent per acre foot	202.00	202.00
<u>Service Line Charge</u>		
Service Line connection Charge	350.00	350.00
Establishment of Service	25.00	25.00
Establishment of Service (after hours) (collected only if customer is sewer only)	40.00	40.00
Re-establishment of Service (Within 12 months)	**	**
Reconnection (delinquent) after hours	30.00	30.00
After hours service charge per hour	50.00	40.00
Deposit	2x mo. Bill	*
NSF Check	15.00	15.00
Late Payment Charge (per month on unpaid balance)		***

* Per Commission Rules (R14-2-403B).

** Per Commission Rules (R-14-2-409.G(6)).

*** 1.50% per month on the unpaid balance monthly.

EXHIBIT B

DECISION NO. _____

Table 1
DEPRECIATION RATES FOR WASTEWATER SYSTEM

Acct. No.	Depreciable Plant	Average Service Life (Years)	Annual Accrual Rate (%)
354	Structures & Improvements	30	3.33
355	Power Generation Equipment	30	3.33
360	Collection Sewers – Force	50	2.00
361	Collection Sewers – Gravity	50	2.00
362	Special Collecting Structures	50	2.00
363	Services to Customers	50	2.00
364	Flow Measuring Devices	10	10.00
365	Flow measuring Installations	20	5.00
366	Reuse Services	50	2.00
367	Reuse Meters and Meter Installations	30	3.33
370	Receiving Wells	30	3.33
371	Pumping Equipment	10	10.00
374	Reuse Distribution Reservoirs	40	2.50
375	Reuse Transmission and Distribution System	50	2.00
380	Treatment and Disposal Equipment	20	5.00
381	Plant Sewers	20	5.00
382	Outfall Sewer Lines	25	4.00
389	Other Plant & Misc Equipment	15	6.67
390	Office Furniture & Equipment	15	6.67
390.1	Computers & Software	5	20.00
391	Transportation Equipment	5	20.00
392	Store Equipment	25	4.00
393	Tools, Shop & Garage Equipment	20	5.00
394	Laboratory Equipment	10	10.00
395	Power Operated Equipment	20	5.00
396	Communication Equipment	10	10.00
397	Miscellaneous Equipment	10	10.00
398	Other Tangible Plant	----	----

EXHIBIT C

DECISION NO. _____

COMMISSIONERS
JEFF HATCH-MILLER - Chairman
WILLIAM A. MUNDELL
MIKE GLEASON
KRISTIN K. MAYES
BARRY WONG



BRIAN C. MCNEIL
Executive Director

ARIZONA CORPORATION COMMISSION

DATE: August 25, 2006

DOCKET NOS.: T-20447A-06-0160

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Amy Bjelland. The recommendation has been filed in the form of an Order on:

CHARLES FORTIER dba A BETTER PAYPHONE CO.

(CC&N/COPT)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00 p.m.** on or before:

SEPTEMBER 5, 2006

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

SEPTEMBER 19 AND 20, 2006

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.


BRIAN C. McNEIL
EXECUTIVE DIRECTOR

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 JEFF HATCH-MILLER, Chairman
4 WILLIAM A. MUNDELL
5 MIKE GLEASON
6 KRISTIN K. MAYES
7 BARRY WONG

8 IN THE MATTER OF THE APPLICATION OF
9 CHARLES FORTIER dba A BETTER PAYPHONE
10 CO. FOR A CERTIFICATE OF CONVENIENCE
11 AND NECESSITY TO PROVIDE CUSTOMER-
12 OWNED PAY TELEPHONE SERVICE IN THE
13 STATE OF ARIZONA.

DOCKET NO. T-20447A-06-0160

DECISION NO. _____

ORDER

14 Open Meeting
15 September 19 and 20, 2006
16 Phoenix, Arizona

17 **BY THE COMMISSION:**

18 Having considered the entire record herein and being fully advised in the premises, the
19 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

20 **FINDINGS OF FACT**

21 1. On March 13, 2006, Charles Fortier dba A Better Payphone Co. ("Applicant") filed with
22 the Commission an application for a Certificate of Convenience and Necessity ("Certificate") to
23 provide customer-owned pay telephone ("COPT") service in the State of Arizona.

24 2. On March 27, 2006, the Utilities Division ("Staff") issued a Letter of Insufficiency
25 and First Set of Data Requests to Applicant.

26 3. On July 13, 2006, Staff issued a Letter of Administrative Completeness in this docket.

27 4. On August 4, 2006, Staff filed a Staff Report recommending approval of the
28 application.

5. In Decision No. 55817 (December 10, 1987), the Commission found that COPT
providers were public service corporations subject to the jurisdiction of the Commission.

6. In Decision No. 57797 (April 8, 1992), the Commission adopted A.A.C. R14-2-901
through R14-2-909 to regulate COPT providers.

7. Decision No. 58535 (February 14, 1994) adopted a Generic Tariff that establishes

1 rates and minimum service standards applicable to COPT service.

2 8. Pursuant to A.R.S. § 40-282, the Commission may issue Decisions regarding COPT
3 Certificates without a hearing.

4 9. Applicant has requested that a Certificate be granted and has indicated that it will
5 provide COPT service pursuant to the rates, terms and conditions specified in the Generic COPT Tariff.

6 10. Staff stated that the Applicant has provided a copy of its customer information placard
7 in compliance with the Generic Tariff.

8 11. Staff also stated that certain benefits accrue to the public in the form of increased pay
9 telephone availability and that issuance of a Certificate is in the public interest.

10 **CONCLUSIONS OF LAW**

11 1. Applicant is a public service corporation within the meaning of Article XV of the
12 Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

13 2. The Commission has jurisdiction over Applicant and the subject matter of the
14 application.

15 3. The provision of COPT service in Arizona by Applicant is in the public interest.

16 4. Applicant is a fit and proper entity to receive a Certificate for providing COPT service
17 in Arizona.

18 5. Staff's recommendation is reasonable and should be adopted.

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ORDER

IT IS THEREFORE ORDERED that the Application of Charles Fortier dba A Better Payphone Co. for a Certificate of Convenience and Necessity for authority to provide customer-owned pay telephone service in Arizona shall be, and the same is, hereby granted.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this ____ day of _____, 2006.

BRIAN C. McNEIL
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

AB:mj

SERVICE LIST FOR:

CHARLES FORTIER dba A BETTER PAYPHONE
CO.

DOCKET NO:

T-20447A-06-0160

Charles Fortier
24741 Via Del Rio
Lake Forest, CA 92630

Christopher Kempley, Chief Counsel
Legal Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, AZ 85007

Ernest G. Johnson, Director
Utilities Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, AZ 85007

COMMISSIONERS
JEFF HATCH-MILLER - Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES



BRIAN C. McNEIL
Executive Director

ARIZONA CORPORATION COMMISSION

DATE: May 11, 2006

DOCKET NO.: T-03687A-06-0134

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Amy Bjelland. The recommendation has been filed in the form of an Order on:

CENTURYTEL LONG DISTANCE, LLC

(CC&N CANCELLATION)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00 p.m.** on or before:

MAY 22, 2006

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

MAY 31 AND JUNE 1, 2006

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.


BRIAN C. McNEIL
EXECUTIVE DIRECTOR

1
2 **BEFORE THE ARIZONA CORPORATION COMMISSION**

3 **COMMISSIONERS**

4 JEFF HATCH-MILLER Chairman
5 WILLIAM A. MUNDELL
6 MARC SPITZER
7 MIKE GLEASON
8 KRISTIN K. MAYES

9 IN THE MATTER OF THE APPLICATION OF
10 CENTURYTEL LONG DISTANCE, LLC, FOR
11 CANCELLATION OF ITS CERTIFICATE OF
12 CONVENIENCE AND NECESSITY TO PROVIDE
13 COMPETITIVE RESOLD INTRASTATE TOLL
14 TELECOMMUNICATIONS SERVICES.

DOCKET NO. T-03687A-06-0134

DECISION NO. _____

ORDER

11 Open Meeting
12 May 31 and June 1, 2006
13 Phoenix, Arizona

14 **BY THE COMMISSION:**

15 Having considered the entire record herein and being fully advised in the premises, the
16 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

17 **FINDINGS OF FACT**

18 1. On August 27, 1999, the Commission issued Decision No. 61899 which granted to
19 CenturyTel Long Distance, LLC ("Applicant") a Certificate of Convenience and Necessity
20 ("Certificate") to provide competitive resold intrastate toll telecommunications services in Arizona.

21 2. On March 6, 2006, Applicant filed an application to cancel its Certificate.

22 3. On March 27, 2006, Applicant filed its Notice of Filing Affidavit of Publication.

23 4. On April 12, 2006, the Commission issued Decision No. 68652 which approved the
24 application of Applicant's affiliated company, CenturyTel of the Southwest, Inc. to sell and transfer
25 its telecommunications assets in Arizona to Hopi Telecommunications, Inc.

26 5. On May 8, 2006, the Commission's Utilities Division ("Staff") filed a Staff Report,
27 recommending approval of the Application.

28 6. Applicant has sent a notification letter to its customers and has no outstanding

customer deposits.

7. Staff indicated that there are no open complaints, inquiries or opinions concerning Applicant. Staff reviewed the notice letter sent by Applicant to its customers and found the notice letter to be consistent with Commission rules and policies.

8. Numerous other carriers in Arizona offer services similar to those that Applicant is currently certificated to provide.

CONCLUSIONS OF LAW

1. Applicant is a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

2. The Commission has jurisdiction over Applicant and the subject matter of the application.

3. Notice of the application was given in accordance with the law.

4. The cancellation of Applicant's CC&N is in the public interest.

5. Pursuant to A.R.S. § 40-282, the Commission may issue this Decision without a hearing.

6. Staff's recommendation is reasonable and should be adopted.

ORDER

IT IS THEREFORE ORDERED that CenturyTel Long Distance's Application shall be, and hereby is, approved.

IT IS FURTHER ORDERED that CenturyTel Long Distance's Certificate of Convenience and Necessity shall be, and hereby is, cancelled.

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1 IT IS FURTHER ORDERED that CenturyTel Long Distance's tariffs on file with the
2 Commission shall be, and hereby are, cancelled.

3 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

4 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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7 CHAIRMAN

COMMISSIONER

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10 COMMISSIONER

COMMISSIONER

COMMISSIONER

11
12 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
13 Director of the Arizona Corporation Commission, have
14 hereunto set my hand and caused the official seal of the
15 Commission to be affixed at the Capitol, in the City of Phoenix,
16 this ____ day of _____, 2006.

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BRIAN C. McNEIL
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

AB:mj

1 SERVICE LIST FOR: CENTURYTEL LONG DISTANCE, LLC
2 DOCKET NO.: T-03687A-06-0134
3 Jeffrey W. Crockett
4 SNELL & WILMER
5 400 East Van Buren
6 Phoenix, AZ 85004
7 Christopher Kempley, Chief Counsel
8 Legal Division
9 ARIZONA CORPORATION COMMISSION
10 1200 West Washington Street
11 Phoenix, Arizona 85007
12 Ernest G. Johnson, Director
13 Utilities Division
14 ARIZONA CORPORATION COMMISSION
15 1200 West Washington Street
16 Phoenix, Arizona 85007
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COMMISSIONERS
JEFF HATCH-MILLER - Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES



BRIAN C. McNEIL
Executive Director

ARIZONA CORPORATION COMMISSION

DATE: April 11, 2006
DOCKET NO: W-01278A-06-0167

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Amy Bjelland. The recommendation has been filed in the form of an Order on:

CLEMENCEAU WATER COMPANY

(CC&N CANCELLATION)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00 p.m.** on or before:

APRIL 20, 2006

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

MAY 2 AND 3, 2006

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.


BRIAN C. McNEIL
EXECUTIVE DIRECTOR

1
2 **BEFORE THE ARIZONA CORPORATION COMMISSION**

3 COMMISSIONERS

4 JEFF HATCH-MILLER Chairman
5 WILLIAM A. MUNDELL
6 MARC SPITZER
7 MIKE GLEASON
8 KRISTIN K. MAYES

9
10 IN THE MATTER OF THE CANCELLATION OF
11 THE CERTIFICATE OF CONVENIENCE AND
12 NECESSITY OF CLEMENCEAU WATER
13 COMPANY.

DOCKET NO. W-01278A-06-0167

14 DECISION NO. _____

15 ORDER

16 Open Meeting
17 May 2 and 3, 2006
18 Phoenix, Arizona

19 **BY THE COMMISSION:**

20 * * * * *

21 Having considered the entire record herein and being fully advised in the premises, the
22 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

23 FINDINGS OF FACT

24 1. On December 9, 2005, the Arizona Corporation Commission ("Commission") issued
25 Decision No. 68334 which granted the application of Cottonwood Water Works, Inc. ("Cottonwood")
26 for the approval of the transfer of assets to the City of Cottonwood and the Town of Clarkdale
27 ("Cities") and for the cancellation of its Certificate of Convenience and Necessity ("Certificate"). In
28 the course of making the determination in the matter, it came to the Commission's attention that the
City of Cottonwood had previously acquired Clemenceau Water Company ("Clemenceau") and that
Clemenceau was no longer providing water service in its certificated area and that there had not been
a Decision to cancel Clemenceau's Certificate.

2. On March 1, 2006, the Commission's Utilities Division ("Staff") filed a
memorandum, attached hereto as Exhibit A, in Docket No. W-01045A-05-0578, stating that the City
of Cottonwood took sole use, possession and ownership of all plant, system and business of

1 Clemenceau on October 12, 2004, and therefore the Certificate for Clemenceau no longer existed.

2 3. On March 14, 2006, the Hearing Division of the Commission filed a memorandum
3 requesting the opening of this docket regarding the administrative closure of Clemenceau's
4 Certificate.

5 **CONCLUSIONS OF LAW**

6 1. Clemenceau is a public service corporation within the meaning of Article XV of the
7 Arizona Constitution and A.R.S. §40-281 *et seq.*

8 2. The Commission has jurisdiction over Clemenceau and the subject matter of the
9 docket.

10 3. Cancellation of Clemenceau's CC&N is in the public interest.

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ORDER

IT IS THEREFORE ORDERED that this docket shall be, and hereby is, administratively closed and the Certificate of Convenience and Necessity for Clemenceau Water Company is hereby cancelled.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this ____ day of _____, 2006.

BRIAN C. McNEIL
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

AB:mj

1 SERVICE LIST FOR: CLEMENCEAU WATER COMPANY
2 DOCKET NO.: W-01278A-06-0167
3 Robert V. Kerrick
4 GALLAGHER & KENNEDY
5 2575 East Camelback Road
6 Phoenix, AZ 85016
7 Steven B. Horton
8 MANGUM, WALL, STOOPS & WARDEN
9 100 N. Elden Street
10 P.O. Box 10
11 Flagstaff, AZ 86002
12 James N. Bradley
13 1785 West Highway 89A, Ste. 2-I
14 P.O. Box 220
15 Sedona, AZ 86339
16 Christopher Kempley, Chief Counsel
17 Legal Division
18 ARIZONA CORPORATION COMMISSION
19 1200 West Washington Street
20 Phoenix, AZ 85007
21 Ernest G. Johnson, Director
22 Utilities Division
23 ARIZONA CORPORATION COMMISSION
24 1200 West Washington
25 Phoenix, AZ 85007
26
27
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COMMISSIONERS
JEFF HATCH-MILLER - Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES



BRIAN C. McNEIL
Executive Director

ARIZONA CORPORATION COMMISSION

DATE: March 17, 2006

DOCKET NO: T-03696A-03-0846

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Amy Bjelland. The recommendation has been filed in the form of an Order on:

GLYPHICS COMMUNICATIONS, INC.

(CC&N CANCELLATION)


Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

MARCH 27, 2006

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

APRIL 4 AND 5, 2006

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.


BRIAN C. McNEIL
EXECUTIVE DIRECTOR

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 JEFF HATCH-MILLER, Chairman
4 WILLIAM A. MUNDELL
5 MARC SPITZER
6 MIKE GLEASON
7 KRISTIN K. MAYES

8 IN THE MATTER OF THE APPLICATION OF
9 GLYPHICS COMMUNICATIONS, INC. FOR
10 CANCELLATION OF ITS CERTIFICATE OF
11 CONVENIENCE AND NECESSITY TO PROVIDE
12 RESOLD LONG DISTANCE
13 TELECOMMUNICATIONS SERVICES IN THE
14 STATE OF ARIZONA.

DOCKET NO. T-03696A-03-0846

DECISION NO. _____

ORDER

15 Open Meeting
16 April 4 and 5, 2006
17 Phoenix, Arizona

18 **BY THE COMMISSION:**

19 Having considered the entire record herein and being fully advised in the premises, the
20 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

21 **FINDINGS OF FACT**

22 1. Glyphics Communications, Inc. ("Applicant") has a Certificate of Convenience and
23 Necessity ("Certificate") to provide resold long distance telecommunications services in the State of
24 Arizona pursuant to Decision No. 62236 (January 12, 2000).

25 2. On November 24, 2003, Applicant filed an application for cancellation of its
26 Certificate, indicating that it does not have any customers in Arizona.

27 3. On December 19, 2003, Applicant filed additional information in the docket relating
28 to its request to cancel its Certificate.

29 4. On February 17, 2004, Staff filed a Staff Report, recommending approval of the
30 application to cancel Applicant's Certificate without a hearing.

31 5. Staff indicated that there are no open complaints, inquiries or opinions concerning
32 Applicant.

33 6. Numerous other carriers in Arizona offer services similar to those that Applicant is
34 currently certificated to provide.

7. No Arizona customers will be affected by the requested cancellation.

CONCLUSIONS OF LAW

1. Applicant is a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

2. The Commission has jurisdiction over Applicant and the subject matter of the application.

3. The cancellation of Applicant's CC&N is in the public interest.

4. Pursuant to A.R.S. § 40-282, the Commission may issue this Decision without a hearing.

5. Staff's recommendation is reasonable and should be adopted.

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ORDER

IT IS THEREFORE ORDERED that the Certificate of Convenience and Necessity granted to Glyphics Communications, Inc. in Decision No. 62236 is hereby cancelled.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I BRIAN C. McNEIL, Executive Director of the Arizona Corporation Commission, have hereunto, set my hand and caused the official seal of this Commission to be affixed at the Capitol, in the City of Phoenix, this _____ day of _____, 2006.

BRIAN C. McNEIL
Executive Director

DISSENT: _____

DISSENT: _____

AB: mj

SERVICE LIST FOR:

GLYPHICS COMMUNICATIONS, INC.

DOCKET NO.:

T-03696A-03-0846

Liz Petroni
Regulatory Consultant
CAPITOL HILL CONSULTING
901 N. Crutscher, D358
Newberg, OR 97132

Christopher Kempley, Chief Counsel
Legal Division
ARIZONA CORPORATION COMMISSION
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Ernest G. Johnson, Director
Utilities Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, AZ 85007

COMMISSIONERS
JEFF HATCH-MILLER - Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES



BRIAN C. McNEIL
Executive Director

ARIZONA CORPORATION COMMISSION

DATE: November 18, 2005

DOCKET NO: W-01045A-05-0578

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Amy Bjelland. The recommendation has been filed in the form of an Opinion and Order on:

COTTONWOOD WATER WORKS, INC.
(TRANSFER OF ASSETS/CC&N CANCELLATION)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

NOVEMBER 28, 2005

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

DECEMBER 6 AND 7, 2005

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.


BRIAN C. McNEIL
EXECUTIVE DIRECTOR

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 JEFF HATCH-MILLER, Chairman
4 WILLIAM A. MUNDELL
5 MARC SPITZER
6 MIKE GLEASON
7 KRISTIN K. MAYES

8 IN THE MATTER OF THE APPLICATION OF
9 COTTONWOOD WATER WORKS, INC. FOR
10 APPROVAL OF THE TRANSFER OF ASSETS
11 AND FOR CANCELLATION OF THE
12 CERTIFICATE OF CONVENIENCE AND
13 NECESSITY.

DOCKET NO. W-01045A-05-0578

OPINION AND ORDER

14 DATE OF HEARING: October 13, 2005

15 PLACE OF HEARING: Phoenix, Arizona

16 ADMINISTRATIVE LAW JUDGE: Amy B. Bjelland

17 APPEARANCES: Mr. Jeffrey Crockett, SNELL & WILMER LLP, on
18 behalf of Cottonwood Water Works; and

19 Mr. Keith Layton, Staff Attorney, Legal Division, on
20 behalf of the Utilities Division of the Arizona
21 Corporation Commission.

22 **BY THE COMMISSION:**

23 On August 9, 2005, Cottonwood Water Works, Inc. ("CWW" or "Company") filed with the
24 Arizona Corporation Commission ("Commission") an application for approval of the transfer of
25 assets ("Application") to the City of Cottonwood ("Cottonwood" or "City") and the Town of
26 Clarkdale ("Clarkdale" or "Town") and for cancellation of its Certificate of Convenience and
27 Necessity ("Certificate").

28 On September 8, 2005, the Application was deemed administratively complete pursuant to
A.R.S. § 41-1074(C). By Procedural Order, a hearing on the Application was scheduled for October
13, 2005.

On September 29, 2005, the Arizona Corporation Commission's Utility Division Staff
("Staff") filed its report on the Application.

Pursuant to the Commission's Procedural Order, CWW provided notice of the Application

1 and the hearing thereon.

2 On October 13, 2005, a full public hearing was convened before a duly authorized
3 Administrative Law Judge of the Commission. CWW and Staff appeared with counsel. At the
4 conclusion of the hearing, the matter was taken under advisement pending submission of a
5 Recommended Opinion and Order to the Commission.

6 * * * * *

7 Having considered the entire record herein and being fully advised in the premises, the
8 Commission finds, concludes, and orders that:

9 **FINDINGS OF FACT**

10 1. Pursuant to authority previously granted by the Commission, CWW is an Arizona
11 corporation that is certificated to provide public water service to approximately 4,900 customers in
12 Cottonwood, Clarkdale and adjacent portions of Yavapai County in Arizona, a map of which is
13 attached as Attachment A. Exh. A-1.

14 2. CWW received its Certificate in Decision No. 2769 (May 15, 1926).

15 3. Cottonwood and Clarkdale are authorized by law and by virtue of separate elections
16 held on March 13, 2001, and March 14, 2000, respectively, to construct, purchase, acquire or lease
17 any plant or property devoted to the business or service of a public water utility, either within or
18 without the corporate limits of the City.

19 4. Cottonwood Municipal Property Corporation ("Cottonwood MPC") is a non-profit
20 corporation organized and existing under Arizona law. Cottonwood MPC was formed to assist
21 Cottonwood in acquiring and financing public infrastructure and improvements, including financing
22 the costs of the acquisition of the privately owned water utility systems that serve the residents of the
23 City.

24 5. On August 2, 2005, CWW, Cottonwood, Cottonwood MPC and Clarkdale executed an
25 Asset Purchase Agreement ("Agreement") whereby Cottonwood and Clarkdale, through Cottonwood
26 MPC, will acquire the assets of CWW. Pursuant to the Agreement, Cottonwood and Clarkdale are to
27 serve all existing customers and honor all customer deposits and line extension agreements. Exh. A-
28 1, Attachment A.

1 6. On August 9, 2005, CWW filed the Application requesting approval for the sale and
2 transfer of its water utility assets to Cottonwood and Clarkdale, and for the cancellation of its
3 Certificate.

4 7. On September 8, 2005, the Application was deemed administratively complete
5 pursuant to A.R.S. § 41-1074(C).

6 8. Pursuant to the Commission's Procedural Order issued September 14, 2005, CWW
7 provided notice of the proposed sale and cancellation of its Certificate to its customers by publication
8 and mail on September 14 and 22, 2005, respectively. In response thereto, the Commission has not
9 received any objections to the pending transaction.

10 9. On September 29, 2005, Staff filed its Report recommending the approval of the sale
11 of assets to Cottonwood and Clarkdale and cancellation of the Company's Certificate.

12 10. A full public hearing was convened on October 13, 2005 before a duly authorized
13 Administrative Law Judge of the Commission. CWW and Staff appeared with counsel. Public
14 comment was given in support of the Application by Brian Mickelsen, City Manager with the City of
15 Cottonwood, Doug Von Gausig, Mayor of the Town of Clarkdale, and Steve Horton, City Attorney
16 with Cottonwood. At the conclusion of the hearing, the matter was taken under advisement.

17 11. At the hearing, Charles Garrison, President of CWW, testified that a regional water
18 system is desirable for Cottonwood and Clarkdale, and that Cottonwood and Clarkdale have plans to
19 invest in substantial infrastructure, including upgrading the fire flow capacity. Mr. Garrison testified
20 that CWW is current on all of its property taxes. Although the Arizona Department of Environmental
21 Quality ("ADEQ") reported that one of CWW's water systems has major deficiencies for Monitoring
22 and Reporting Status, Mr. Garrison stated that since July 2005 CWW has proceeded to monitor the
23 level of disinfection byproducts and the maximum residual disinfection level in the water system and
24 the results have not exceeded the applicable standard for reporting parameters. Arsenic levels from
25 one CWW water system exceed the new arsenic standard of 10 micrograms per liter that becomes
26 effective January 23, 2006; however, Staff stated that Cottonwood and Clarkdale will move
27 "expeditiously and effectively" to reduce the level of arsenic in their water supplies to levels that
28 meet the new standard.

12. Staff testified that granting CWW's request to transfer all of its assets to Cottonwood and Clarkdale and cancel its Certificate is in the public interest. Staff recommended that CWW be required to file with Docket Control notification that the transaction has closed within 30 days of the date of closing. Staff further recommended that CWW be required to file with Docket Control notification that all customers' deposits have been credited within 60 days of the date of closing.

13. Steve Horton, City Attorney with Cottonwood, gave public comment that the service area for CWW that is outside of the municipal boundaries of Cottonwood and Clarkdale will be served by Cottonwood through its municipal water utility. Mr. Horton stated that to the extent there is contiguous and orderly development outside the municipal boundaries of Cottonwood and Clarkdale, service could be provided to those areas.

CONCLUSIONS OF LAW

1. Cottonwood Water Works is a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. §40-281 *et seq.*

2. The Commission has jurisdiction over Cottonwood Water Works and the subject matter of the application.

3. Notice of the application was provided in accordance with law.

4. The sale and transfer of Cottonwood Water Works' water utility assets to the City of Cottonwood and the Town of Clarkdale will benefit the public interest, and therefore the application should be approved.

ORDER

IT IS THEREFORE ORDERED that the application of Cottonwood Water Works for approval of the transfer of assets is hereby granted.

IT IS FURTHER ORDERED that Cottonwood Water Works is authorized to transfer to the City of Cottonwood and the Town of Clarkdale all of its water utility assets for the provision of public water service.

IT IS FURTHER ORDERED that Cottonwood Water Works shall file, as a compliance item in this docket, within 30 days of closing of the transaction, certification that the transaction has been completed.

1 IT IS FURTHER ORDERED that Cottonwood Water Works shall file, as a compliance item
2 in this docket, within 60 days of the date of closing of the transaction, certification that all customers'
3 deposits have been credited.

4 IT IS FURTHER ORDERED that upon certification that all customers' deposits have been
5 credited, the Certificate of Convenience and Necessity of Cottonwood Water Works is cancelled.

6 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

7 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.
8
9

10 CHAIRMAN

COMMISSIONER

11
12
13
14
15 COMMISSIONER

COMMISSIONER

COMMISSIONER

16
17 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
18 Director of the Arizona Corporation Commission, have
19 hereunto set my hand and caused the official seal of the
20 Commission to be affixed at the Capitol, in the City of Phoenix,
21 this ____ day of _____, 2005.

22 BRIAN C. McNEIL
23 EXECUTIVE DIRECTOR

24 DISSENT _____

25
26 DISSENT _____

27 AB:mj

1 SERVICE LIST FOR:

COTTONWOOD WATER WORKS, INC.

2 DOCKET NO.:

W-01045A-05-0579

3 Deborah R. Scott
4 Jeffrey W. Crockett
5 SNELL & WILMER
6 One Arizona Center
7 Phoenix, AZ 85004
8 Attorneys for Cottonwood Water Works, Inc.

9 Charles Garrison
10 COTTONWOOD WATER WORKS, INC.
11 1042 Main Street
12 Cottonwood, AZ 86526

13 Steven B. Horton
14 MANGUM, WALL, STOOPS & WARDEN
15 100 North Elden
16 P.O. Box 10
17 Flagstaff, AZ 86002
18 Attorneys for City of Cottonwood

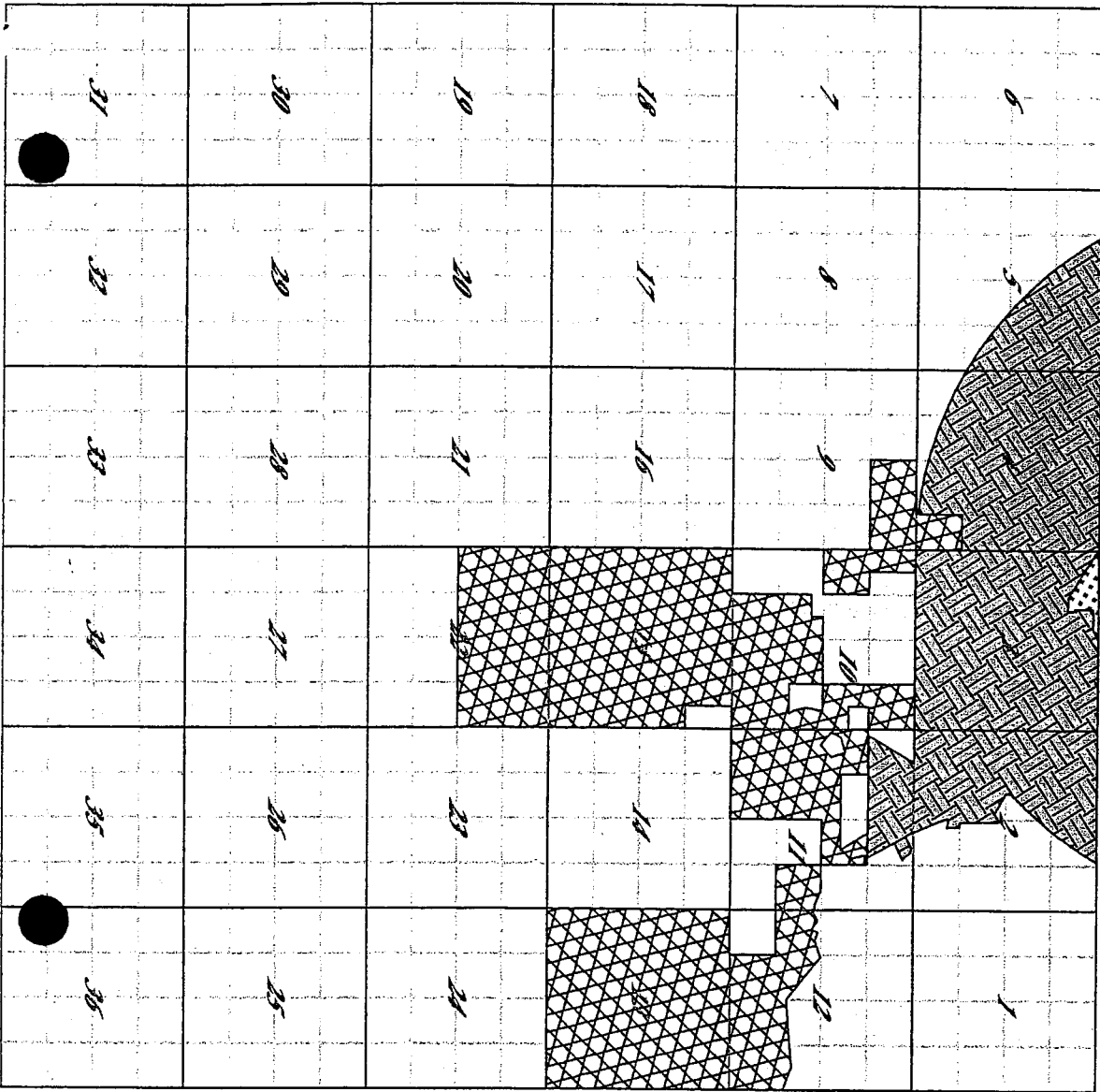
19 Robert B. Hardy
20 CITY OF COTTONWOOD
21 827 North Main Street
22 Cottonwood, AZ 86256

23 Christopher K. Kempley
24 Legal Division
25 ARIZONA CORPORATION COMMISSION
26 1200 W. Washington Street
27 Phoenix, Arizona 85007

28 Ernest G. Johnson
Utilities Division
ARIZONA CORPORATION COMMISSION
1200 W. Washington Street
Phoenix, Arizona 85007

COUNTY of Hawaii

RANGE 3 East



TOWNSHIP 15 North

Map No. 26





-  W-1278 (2)
Clemenceau Water Company
-  W-2060 (3)
Cordes Lakes Water Company (Verde Village)
-  W-1045 (2)
Cottonwood Water Works, Inc.
-  (2)
Cottonwood Water Works, Inc.
Docket No. W-01045A-05-0578
Application to Cancel CC&N - 10
City of Cottonwood and Town of Clarkdale

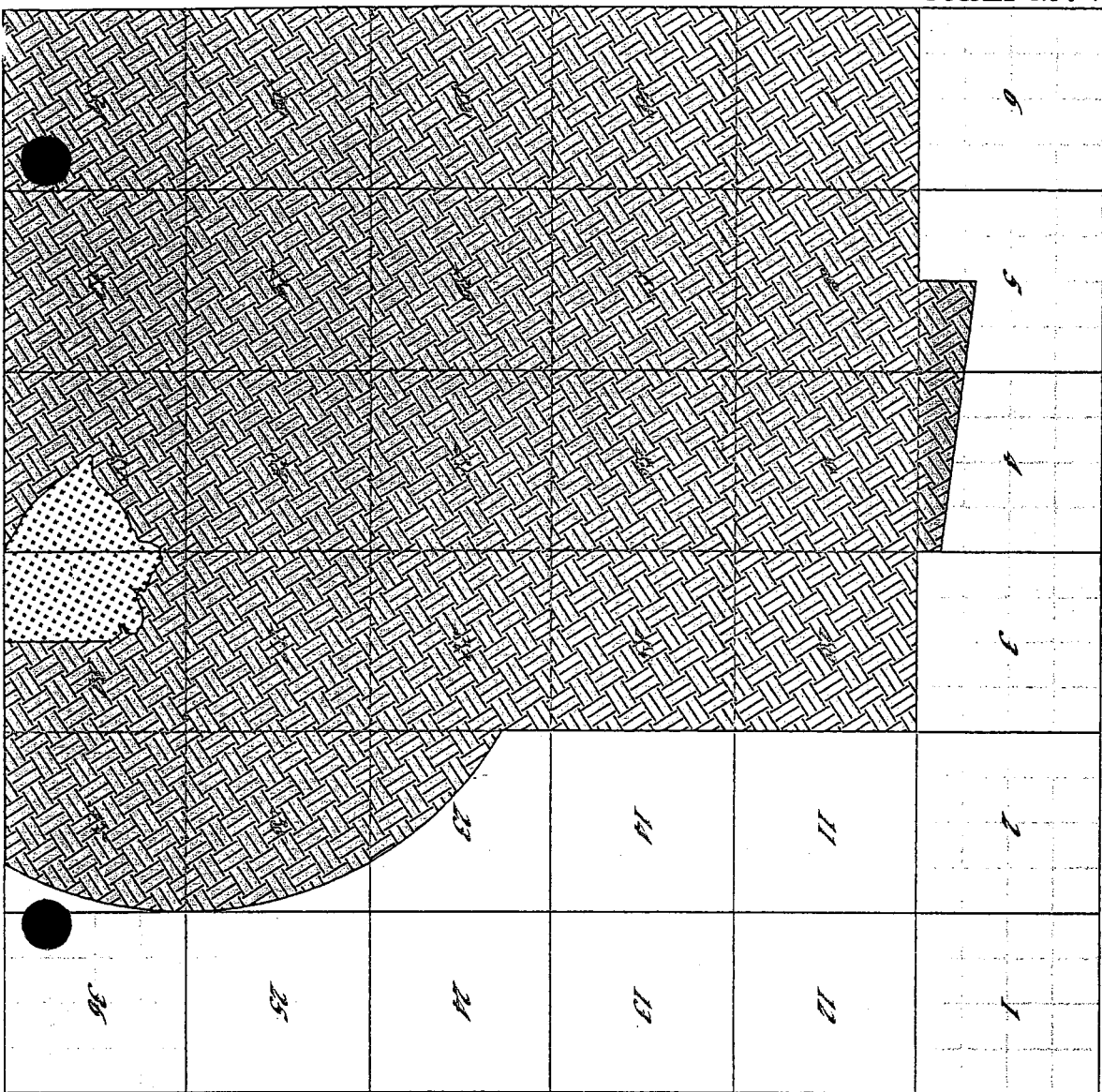
EXHIBIT A

DECISION NO. _____

COUNTY of Yavapai

DOCKET NO. W-01045A-05-0578

RANGE 3 East



TOWNSHIP 16 North



W-1278 (2)

Clemenceau Water Company



W-1045 (2)

Cottonwood Water Works, Inc.



(2)

Cottonwood Water Works, Inc.
Docket No. W-01045A-05-0578
Application to Cancel CC&N - to
City of Cottonwood and Town of Clarkdale

DECISION NO. 1

COMMISSIONERS
JEFF HATCH-MILLER - Chairman
WILLIAM A. MUNDELL
MIKE GLEASON
KRISTIN K. MAYES
BARRY WONG



BRIAN C. MCNEIL
Executive Director

ARIZONA CORPORATION COMMISSION

DATE: August 25, 2006
DOCKET NO.: T-03406A-06-0260
TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Amy Bjelland. The recommendation has been filed in the form of an Order on:

ESCHELON TELECOM OF ARIZONA, INC.

(FINANCING)


Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00 p.m.** on or before:

SEPTEMBER 5, 2006

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

SEPTEMBER 19 AND 20, 2006

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.


BRIAN C. McNEIL
EXECUTIVE DIRECTOR

1
2 **BEFORE THE ARIZONA CORPORATION COMMISSION**

3 COMMISSIONERS

4 JEFF HATCH-MILLER Chairman
5 WILLIAM A. MUNDELL
6 MIKE GLEASON
7 KRISTIN K. MAYES
8 BARRY WONG

9
10 IN THE MATTER OF THE APPLICATION OF
11 ESCHELON TELECOM OF ARIZONA, INC. FOR
12 APPROVAL OF ENCUMBRANCE OF ASSETS.

DOCKET NO. T-03406A-06-0260

DECISION NO. _____

13 ORDER

14 Open Meeting
15 September 19 and 20, 2006
16 Phoenix, Arizona

17 **BY THE COMMISSION:**

18 Having considered the entire record herein and being fully advised in the premises, the
19 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

20 FINDINGS OF FACT

21 1. Eschelon Telecom of Arizona, Inc. ("Eschelon Arizona") is a Minnesota corporation
22 that is a subsidiary of Eschelon Operating Company ("Eschelon Operating"), also a corporation
23 organized and existing under the laws of Minnesota. Eschelon Operating, in turn, is a direct, wholly-
24 owned subsidiary of Eschelon Telecom, Inc. ("Eschelon Telecom").

25 2. On April 19, 2006, Eschelon Arizona filed an application with the Commission
26 requesting authorization to pledge assets to secure debt obtained by its parent company, Eschelon
27 Operating, not to exceed \$48 million of Senior Second Secured Notes due in 2010. The Commission
28 already approved a pledge of assets by Eschelon Operating of \$165 million. Eschelon Operating
issued \$165 million, then redeemed \$40 million, and subsequently issued another \$48 million. With
approval of the current request, Eschelon Arizona would have approval to pledge assets to secure a
total of \$173 million of Eschelon Operating indebtedness.

1 3. Eschelon Arizona provided the Commission's Utilities Division Staff ("Staff") an
2 affidavit of publication verifying that it published notice of its application in *The Arizona Republic*, a
3 newspaper of general circulation in Maricopa County, on May 8, 2006.

4 4. On July 18, 2006, Staff filed a Staff Report recommending conditional approval of the
5 application.

6 5. In this docket, Eschelon Arizona seeks to specify the amount of debt for which
7 Arizona assets are pledged. Previous decisions have required the procurement and maintenance of a
8 performance bond secured by assets not otherwise encumbered.

9 6. The Commission previously authorized Eschelon Arizona in Decision No. 67977 (July
10 18, 2005) and Decision No. 67885 (June 1, 2005) to pledge its assets to secure the debt of Eschelon
11 Operating in the amount of \$100 million and \$65 million, respectively, provided that Eschelon
12 Arizona obtain a performance bond and that the assets used to collateralize the bond are to remain
13 unencumbered. Staff states that Eschelon Arizona's management represents that Eschelon Arizona is
14 in compliance with this requirement; Eschelon Arizona management also represents that the Arizona
15 assets represent less than ten percent of the collateral being pledged for this debt. Previous rate cases
16 indicate the value of Arizona assets to be approximately \$4,400,000 (Decision No. 67885), as
17 compared with the \$48 million of debt requested for approval and to be issued by Eschelon
18 Operating. The obligations of the notes will be guaranteed by operating subsidiaries of each state,
19 including Eschelon Arizona, and each subsidiary wishes to grant a security interest in its plant and
20 equipment.

21 7. Eschelon Operating states that it will use the proceeds of this transaction for general
22 corporate purposes, which may include repaying indebtedness, increasing working capital, funding
23 future acquisitions or any other purpose deemed appropriate by Eschelon Operating. Eschelon
24 Arizona states in its application that this transaction will help Eschelon Arizona to continue to offer
25 competitive services in Arizona and that it may allow Eschelon Arizona to expand its service offering
26 and facilities in Arizona.

27 8. The Staff Report states that Staff's review of the transaction indicates that it would not
28

1 impair the financial status of Eschelon Arizona, would not impair its ability to attract capital, nor
2 would it impair the ability of Eschelon Arizona to provide safe, reliable, and adequate service.

3 9. Staff states that Eschelon Arizona's customers have alternative service providers and
4 would not experience significant harm in the event that the parent has financial difficulties.

5 10. Staff states that Eschelon Arizona has no outstanding compliance issues.

6 11. Staff concludes that approval of this application assists Eschelon Arizona and
7 Eschelon Operating to maintain and improve its Arizona operations and to serve Arizona ratepayers.
8 Staff further concludes that granting authorization to collateralize the debt is beneficial as it reduces
9 borrowing costs and does not impair Eschelon Operating's ability to attract capital or Eschelon
10 Arizona's ability to serve its customers.

11 12. Staff recommends:

12 (a) approval of the application provided that Eschelon Operating is in full conformity
13 with the performance bond requirements established by Decision No. 67885;

14 (b) authorizing Eschelon Arizona to engage in any transactions and to execute any
15 documents necessary to effectuate the authorizations granted; and

16 (c) that the Commission order Eschelon Arizona to file, as a compliance item in this
17 docket, any available proof of the existence of performance bonds within 90 days of the Decision in
18 this matter.

19 **CONCLUSIONS OF LAW**

20 1. Eschelon Arizona is a public service corporation within the meaning of Article XV of
21 the Arizona Constitution, A.R.S. §§ 40-285, 40-301, 40-302, and A.A.C. R14-2-804.

22 2. The Commission has jurisdiction over Eschelon Arizona and the subject matter of the
23 application.

24 3. Authorization of Eschelon Arizona's pledge of its assets in support of its parent's debt
25 issuance is compatible with the public interest.

26 4. The transaction approved herein will not impair the financial status of the public
27 utility, otherwise prevent it from attracting capital at fair and reasonable terms, or impair the ability
28

1 of the public utility to provide safe, reasonable and adequate service.

2 5. The guarantee authority approved herein is for lawful purposes within Eschelon
3 Arizona's corporate powers, is compatible with the public interest, with sound financial practices,
4 and with the proper performance by Eschelon Arizona of service as a public service corporation will
5 not impair Eschelon Arizona's ability to perform that service.

6 6. Staff's recommendations are reasonable and should be adopted.

7 **ORDER**

8 IT IS THEREFORE ORDERED that pursuant to A.R.S. §§ 40-285, 40-301, and AAC R14-2-
9 804, Eschelon Telecom of Arizona, Inc.'s application for approval to guarantee the debt of Eschelon
10 Operating Company as set forth in the April 19, 2006 application, and as conditioned herein, is
11 hereby granted.

12 IT IS FURTHER ORDERED that Eschelon Telecom of Arizona, Inc. is hereby authorized to
13 engage in any transactions and/or execute any documents necessary to effectuate the authorization as
14 granted herein, except that Eschelon Telecom of Arizona, Inc. shall remain in full conformity with
15 the requirements of Decision No. 67885.

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IT IS FURTHER ORDERED that Eschelon Telecom of Arizona, Inc. shall file proof of the existence of performance bonds with Docket Control, as a compliance item in this docket, within 90 days of the effective date of this Decision.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this ____ day of _____, 2006.

BRIAN C. McNEIL
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

AB:mj

1 SERVICE LIST FOR: ESCHELON TELECOM OF ARIZONA, INC.

2 DOCKET NO.: T-03406A-06-0260

3 Thomas H. Campbell
4 Michael T. Hallam
5 LEWIS AND ROCA
6 40 N. Central Avenue
7 Phoenix, AZ 85004

8 Christopher Kempley, Chief Counsel
9 Legal Division
10 ARIZONA CORPORATION COMMISSION
11 1200 West Washington Street
12 Phoenix, Arizona 85007

13 Ernest G. Johnson, Director
14 Utilities Division
15 ARIZONA CORPORATION COMMISSION
16 1200 West Washington Street
17 Phoenix, Arizona 85007

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COMMISSIONERS
JEFF HATCH-MILLER - Chairman
WILLIAM A. MUNDELL
MIKE GLEASON
KRISTIN K. MAYES
BARRY WONG



BRIAN C. MCNEIL
Executive Director

ARIZONA CORPORATION COMMISSION

DATE: August 25, 2006

DOCKET NO.: T-20381A-05-0493

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Amy Bjelland. The recommendation has been filed in the form of an Order on:

800 RESPONSE INFORMATION SERVICES LLC

(CC&N/RESELLER)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00 p.m.** on or before:

SEPTEMBER 5, 2006

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

SEPTEMBER 19 AND 20, 2006

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.


BRIAN C. MCNEIL
EXECUTIVE DIRECTOR

1
2 **BEFORE THE ARIZONA CORPORATION COMMISSION**

3 **COMMISSIONERS**

4 JEFF HATCH-MILLER, Chairman
5 WILLIAM A. MUNDELL
6 MIKE GLEASON
7 KRISTIN K. MAYES
8 BARRY WONG

9 IN THE MATTER OF THE APPLICATION OF 800
10 RESPONSE INFORMATION SERVICES LLC FOR
11 A CERTIFICATE OF CONVENIENCE AND
12 NECESSITY TO PROVIDE COMPETITIVE
13 RESOLD INTEREXCHANGE
14 TELECOMMUNICATIONS SERVICES.

DOCKET NO. T-20381A-05-0493

DECISION NO. _____

15 **ORDER**

16 Open Meeting
17 September 19 and 20, 2006
18 Phoenix, Arizona

19 **BY THE COMMISSION:**

20 Having considered the entire record herein and being fully advised in the premises, the
21 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

22 **FINDINGS OF FACT**

23 1. On July 12, 2005, 800 Response Information Services, LLC ("Applicant") filed with
24 the Commission an application for a Certificate of Convenience and Necessity ("Certificate") to
25 provide competitive resold interexchange telecommunications services within the State of Arizona.

26 2. Applicant is a switchless reseller that purchases telecommunications services from a
27 variety of carriers for resale to its customers.

28 3. In Decision No. 58926 (December 22, 1994), the Commission found that resold
telecommunications providers ("resellers") are public service corporations subject to the jurisdiction
of the Commission.

4. Applicant has authority to transact business in the State of Arizona.

5. On August 29, 2005, Applicant filed an Affidavit of Publication indicating compliance
with the Commission's notice requirements.

1 6. On August 4, 2006, the Commission's Utilities Division Staff ("Staff") filed a Staff
2 Report which includes Staff's fair value rate base determination in this matter and recommends
3 approval of the application subject to certain conditions. The Staff Report addressed the overall
4 fitness of Applicant to receive a Certificate and also addressed whether its services should be
5 classified as competitive and whether its initial rates are just and reasonable.

6 7. In its Staff Report, Staff stated that Applicant provided unaudited financial statements
7 for the three months ending December 31, 2005, which list assets of \$295,671, equity of \$65,661 and
8 net income of \$16,885.

9 8. Applicant's tariff indicates that it does not require deposits from its customers for
10 services, and does not indicate that Applicant collects advances and/or prepayments from its resold
11 interexchange customers. If at some future date, Applicant wants to collect advances, deposits and/or
12 prepayments from its resold interexchange customers, Staff recommended that the Applicant be
13 required to file an application with the Commission for approval. The application must reference the
14 decision in this docket and explain the Applicant's plans for procuring a performance bond.

15 9. In the event that the Applicant experiences financial difficulties, there will be minimal
16 impact to its customers because there are many companies that provide resold interexchange
17 telecommunications service or the customers may choose a facilities-based provider. The Applicant
18 proposes only to provide "800" toll free telecommunications services. The caller making the "800"
19 toll free call does not need the ability to dial a 1+ or 101XXXX (dial around) access code. The
20 Applicant's customer pays for the call made and received by the customer via the toll-free number
21 assigned to the customer instead of the caller paying for the call. If the Applicant desires to provide
22 other telecommunications services than "800" toll free service, Staff recommended that the Applicant
23 file an application with the Commission and affirm that the Applicant's customers will be able to
24 access alternative toll service providers to resellers via 101XXXX access code. In the longer term,
25 the customer may desire to permanently switch to another provider.

26 10. Staff stated that based on information obtained from the Applicant, it has determined
27 that Applicant's fair value rate base ("FVRB") is zero and Applicant's FVRB is too small to be useful
28 in a fair value analysis, and is not useful in setting rates. Staff further stated that in general, rates for

1 competitive services are not set according to rate of return regulation, but are heavily influenced by
2 the market. Staff recommended that the Commission not set rates for Applicant based on the fair
3 value of its rate base.

4 11. Staff believes that Applicant has no market power and that the reasonableness of its
5 rates will be evaluated in a market with numerous competitors. In light of the competitive market in
6 which the Applicant will be providing its services, Staff believes that the rates in Applicant's
7 proposed tariffs for its competitive services will be just and reasonable, and recommends that the
8 Commission approve them.

9 12. Commission rules provide pricing flexibility by allowing competitive
10 telecommunication service companies to price their services at or below the maximum rates
11 contained in their tariffs as long as the pricing of those services complies with A.A.C. R14-2-1109.
12 This requires the Applicant to file a tariff for each competitive service that states the maximum rate
13 as well as the effective (actual) price that will be charged for the service. Any changes to the
14 Applicant's effective (actual) price for a service must comply with A.A.C. R14-2-1109, which
15 provides that the minimum rates for the applicant's competitive services must not be below the
16 Applicant's total service long run incremental costs of providing the services. The Applicant's
17 maximum rates should be the maximum rates proposed by the Applicant in its most recent tariffs on
18 file with the Commission. Future changes to the maximum rates must comply with A.A.C. R14-2-
19 1110.

20 13. Staff recommended approval of Applicant's application subject to the following:

21 (a) The Applicant should be ordered to comply with all Commission rules, orders,
22 and other requirements relevant to the provision of intrastate telecommunications
23 service;

24 (b) The Applicant should be ordered to maintain its accounts and records as
25 required by the Commission;

26 (c) The Applicant should be ordered to file with the Commission all financial and
27 other reports that the Commission may require, and in a form and at such times as the
28 Commission may designate;

(d) The Applicant should be ordered to maintain on file with the Commission all

current tariffs and rates, and any service standards that the Commission may require;

(e) The Applicant should be ordered to comply with the Commission's rules and modify its tariffs to conform to these rules if it is determined that there is a conflict between the Applicant's tariffs and the Commission's rules;

(f) The Applicant should be ordered to cooperate with Commission investigations including, but not limited to, customer complaints;

(g) The Applicant should be ordered to participate in and contribute to the Arizona Universal Service Fund, as required by the Commission;

(h) The Applicant should be ordered to notify the Commission immediately upon changes to the Applicant's name, address or telephone number;

(i) If at some future date, the Applicant wants to collect from its customers an advance, deposit, and/or prepayment, Staff recommends that the Applicant be required to file such information with the Commission for Commission approval. Such application must reference the Decision Number in this docket and must explain the Applicant's plans for procuring a performance bond;

(j) The Applicant's interexchange service offerings should be classified as competitive pursuant to A.A.C. R14-2-1108;

(k) The maximum rates for these services should be the maximum rates proposed by the Applicant in its proposed tariffs. The minimum rates for the Applicant's competitive services should be the Applicant's total service long run incremental costs of providing those services as set forth in A.A.C. R14-2-1109;

(l) In the event that the Applicant states only one rate in its proposed tariff for a competitive service, the rate stated should be the effective price to be charged for the service as well as the service's maximum rate

(m) If the Applicant desires to provide other telecommunications services other than "800" toll free service call, Staff recommends that the Applicant file an application with the Commission and affirm that the Applicant's customers will be able to access alternative toll service providers to resellers via 101XXXX; and

(n) In the event the Applicant requests to discontinue and/or abandon its service area it must provide notice to both the Commission and its customers in accordance with A.A.C. R14-2-1107.

14. Staff further recommended that Applicant's Certificate should be conditioned upon the Applicant filing conforming tariffs in accordance with this Decision within 365 days from the date of an Order in this matter, or 30 days prior to providing service, whichever comes first.

15. Staff recommended that if the Applicant fails to meet the timeframes outlined in

1 Finding of Fact No. 14, that Applicant's Certificate should become null and void after due process.

2 16. Applicant will not collect advances, prepayments or deposits from customers.

3 17. The rates proposed by this filing are for competitive services.

4 18. Staff's recommendations as set forth herein are reasonable.

5 19. Applicant's fair value rate base is zero.

6 **CONCLUSIONS OF LAW**

7 1. Applicant is a public service corporation within the meaning of Article XV of the
8 Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

9 2. The Commission has jurisdiction over Applicant and the subject matter of the
10 application.

11 3. Notice of the application was given in accordance with the law.

12 4. Applicant's provision of resold interexchange telecommunications services is in the
13 public interest.

14 5. Applicant is a fit and proper entity to receive a Certificate as conditioned herein for
15 providing competitive resold interexchange telecommunications services in Arizona.

16 6. Staff's recommendations are reasonable and should be adopted.

17 7. Applicant's fair value rate base is not useful in determining just and reasonable rates
18 for the competitive services it proposes to provide to Arizona customers.

19 8. Applicant's rates, as they appear in its proposed tariffs, are just and reasonable and
20 should be approved.

21 **ORDER**

22 IT IS THEREFORE ORDERED that the application of 800 Response Information Services,
23 L.L.C. for a Certificate of Convenience and Necessity for authority to provide competitive resold
24 interexchange telecommunications services, shall be, and hereby is, granted, conditioned upon its
25 compliance with the requirements as set forth in Findings of Fact Nos. 13 and 14, above.

26 IT IS FURTHER ORDERED that Staff's recommendations set forth in Findings of Fact Nos.
27 13 and 14 above are hereby adopted.

28 IT IS FURTHER ORDERED that 800 Response Information Services, L.L.C. shall comply

with the adopted Staff recommendations as set forth in Findings of Fact Nos. 13 and 14 above.

IT IS FURTHER ORDERED that if 800 Response Information Services, L.L.C. fails to meet the timeframes outlined in Finding of Fact. No. 14 above that the Certificate conditionally granted herein shall become null and void after due process.

IT IS FURTHER ORDERED that 800 Response Information Services, L.L.C. shall not require its Arizona customers to pay advances, prepayments or deposits for any of its products or services.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this ____ day of _____, 2006.

BRIAN C. McNEIL
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

AB:mj

1 SERVICE LIST FOR: 800 RESPONSE INFORMATION SERVICES, L.L.C.

2 DOCKET NO.: T-20381A-05-0493

3 Robert Cleary
4 800 Response Information Services, L.L.C.
5 200 Church Street
6 Burlington, VT 05401

7 Christopher Kempley, Chief Counsel
8 Legal Division
9 ARIZONA CORPORATION COMMISSION
10 1200 West Washington Street
11 Phoenix, Arizona 85007

12 Ernest G. Johnson, Director
13 Utilities Division
14 ARIZONA CORPORATION COMMISSION
15 1200 West Washington Street
16 Phoenix, Arizona 85007

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COMMISSIONERS
JEFF HATCH-MILLER - Chairman
WILLIAM A. MUNDELL
MIKE GLEASON
KRISTIN K. MAYES
BARRY WONG



BRIAN C. MCNEIL
Executive Director

ARIZONA CORPORATION COMMISSION

DATE: August 25, 2006

DOCKET NO.: T-20428A-05-0800

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Amy Bjelland. The recommendation has been filed in the form of an Order on:

GLOBAL TOUCH TELECOM, INC.

(CC&N/RESELLER)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00 p.m.** on or before:

SEPTEMBER 5, 2006

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

SEPTEMBER 19 AND 20, 2006

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.


BRIAN C. McNEIL
EXECUTIVE DIRECTOR

1
2 **BEFORE THE ARIZONA CORPORATION COMMISSION**

3 COMMISSIONERS

4 JEFF HATCH-MILLER, Chairman
5 WILLIAM A. MUNDELL
6 MIKE GLEASON
7 KRISTIN K. MAYES
8 BARRY WONG

9 IN THE MATTER OF THE APPLICATION OF
10 GLOBAL TOUCH TELECOM, INC. FOR A
11 CERTIFICATE OF CONVENIENCE AND
12 NECESSITY TO PROVIDE RESOLD
13 INTEREXCHANGE TELECOMMUNICATIONS
14 SERVICES.

DOCKET NO. T-20428A-05-0800

DECISION NO. _____

15 ORDER

16 Open Meeting
17 September 19 and 20, 2006
18 Phoenix, Arizona

19 **BY THE COMMISSION:**

20 Having considered the entire record herein and being fully advised in the premises, the
21 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

22 FINDINGS OF FACT

23 1. On October 31, 2005, Global Touch Telecom, Inc. ("Applicant" or "Global Touch")
24 filed with the Commission an application for a Certificate of Convenience and Necessity
25 ("Certificate") to provide resold interexchange telecommunications services within the State of
26 Arizona.

27 2. Applicant is a switchless reseller that purchases telecommunications services from a
28 variety of carriers for resale to its customers.

3. In Decision No. 58926 (December 22, 1994), the Commission found that resold
telecommunications providers ("resellers") are public service corporations subject to the jurisdiction
of the Commission.

4. Applicant has authority to transact business in the State of Arizona.

5. On December 1, 2005, Applicant filed an Affidavit of Publication indicating

1 compliance with the Commission's notice requirements.

2 6. On July 21, 2006, the Commission's Utilities Division Staff ("Staff") filed a Staff
3 Report which includes Staff's fair value rate base determination in this matter and recommends
4 approval of the application subject to certain conditions. The Staff Report addressed the overall
5 fitness of Applicant to receive a Certificate and also addressed whether its services should be
6 classified as competitive and whether its initial rates are just and reasonable.

7 7. In its Staff Report, Staff stated that Applicant provided unaudited financial statements
8 for the year ending December 31, 2005, which list assets of \$5,208,632, equity of \$2,172,053 and net
9 loss of \$1,238,846.

10 8. Applicant's tariff indicates that it does not require deposits from its customers for
11 services. If at some future date, Applicant wants to collect advances, deposits and/or prepayments
12 from its resold interexchange customers, Staff recommended that the Applicant be required to file an
13 application with the Commission for approval. The application must reference the decision in this
14 docket and explain the Applicant's plans for procuring a performance bond.

15 9. In the event that the Applicant experiences financial difficulties, there will be minimal
16 impact to its customers because end users can access other interexchange providers via dial around
17 service or, in the longer term, the customer may desire to permanently switch to another provider.

18 10. Staff stated that based on information obtained from the Applicant, it has determined
19 that Applicant's fair value rate base ("FVRB") is zero and Applicant's FVRB is too small to be useful
20 in a fair value analysis.

21 11. Staff believes that Applicant has no market power and that the reasonableness of its
22 rates will be evaluated in a market with numerous competitors. In light of the competitive market in
23 which the Applicant will be providing its services, Staff believes that the rates in Applicant's
24 proposed tariffs for its competitive services will be just and reasonable, and recommends that the
25 Commission approve them.

26 12. Commission rules provide pricing flexibility by allowing competitive
27 telecommunication service companies to price their services at or below the maximum rates
28 contained in their tariffs as long as the pricing of those services complies with A.A.C. R14-2-1109.

1 This requires the Applicant to file a tariff for each competitive service that states the maximum rate
2 as well as the effective (actual) price that will be charged for the service. Any changes to the
3 Applicant's effective (actual) price for a service must comply with A.A.C. R14-2-1109, which
4 provides that the minimum rates for the applicant's competitive services must not be below the
5 Applicant's total service long run incremental costs of providing the services. The Applicant's
6 maximum rates should be the maximum rates proposed by the Applicant in its most recent tariffs on
7 file with the Commission. Future changes to the maximum rates must comply with A.A.C. R14-2-
8 1110.

9 13. Staff recommended approval of Applicant's application subject to the following:

- 10 (a) The Applicant should be ordered to comply with all Commission rules, orders,
11 and other requirements relevant to the provision of intrastate telecommunications
12 service;
- 13 (b) The Applicant should be ordered to maintain its accounts and records as
14 required by the Commission;
- 15 (c) The Applicant should be ordered to file with the Commission all financial and
16 other reports that the Commission may require, and in a form and at such times as the
17 Commission may designate;
- 18 (d) The Applicant should be ordered to maintain on file with the Commission all
19 current tariffs and rates, and any service standards that the Commission may require;
- 20 (e) The Applicant should be ordered to comply with the Commission's rules and
21 modify its tariffs to conform to these rules if it is determined that there is a conflict
22 between the Applicant's tariffs and the Commission's rules;
- 23 (f) The Applicant should be ordered to cooperate with Commission investigations
24 including, but not limited to, customer complaints;
- 25 (g) The Applicant should be ordered to participate in and contribute to the Arizona
26 Universal Service Fund, as required by the Commission;
- 27 (h) The Applicant should be ordered to notify the Commission immediately upon
28 changes to the Applicant's name, address and/or telephone number;
- (i) If at some future date, the Applicant wants to collect from its customers an
advance, deposit, and/or prepayment, Staff recommends that the Applicant be required
to file such information with the Commission for Commission approval. Such
application must reference the Decision Number in this docket and must explain the
Applicant's plans for procuring a performance bond;

(j) The Applicant's intrastate interexchange service offerings should be classified as competitive pursuant to A.A.C. R14-2-1108;

(k) The maximum rates for these services should be the maximum rates proposed by the Applicant in its proposed tariffs. The minimum rates for the Applicant's competitive services should be the Applicant's total service long run incremental costs of providing those services as set forth in A.A.C. R14-2-1109;

(l) In the event that the Applicant states only one rate in its proposed tariff for a competitive service, the rate stated should be the effective (actual) price to be charged for the service as well as the service's maximum rate; and

(m) In the event the Applicant requests to discontinue and/or abandon its service area it must provide notice to both the Commission and its customers in accordance with A.A.C. R14-2-1107.

14. Staff further recommended that Applicant's Certificate should be conditioned upon the Applicant filing conforming tariffs in accordance with this Decision within 365 days from the date of an Order in this matter, or 30 days prior to providing service, whichever comes first.

15. Staff recommended that if the Applicant fails to meet the timeframes outlined in Finding of Fact No. 14, that Applicant's Certificate should become null and void after due process.

16. Applicant will not collect advances, prepayments or deposits from customers.

17. The rates proposed by this filing are for competitive services.

18. Staff's recommendations as set forth herein are reasonable.

19. Applicant's fair value rate base is zero.

CONCLUSIONS OF LAW

1. Applicant is a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

2. The Commission has jurisdiction over Applicant and the subject matter of the application.

3. Notice of the application was given in accordance with the law.

4. Applicant's provision of resold interexchange telecommunications services is in the public interest.

5. Applicant is a fit and proper entity to receive a Certificate as conditioned herein for

1 providing competitive resold interexchange telecommunications services in Arizona.

2 6. Staff's recommendations are reasonable and should be adopted.

3 7. Applicant's fair value rate base is not useful in determining just and reasonable rates
4 for the competitive services it proposes to provide to Arizona customers.

5 8. Applicant's rates, as they appear in its proposed tariffs, are just and reasonable and
6 should be approved.

7 **ORDER**

8 IT IS THEREFORE ORDERED that the application of Global Touch Telecom, Inc. for a
9 Certificate of Convenience and Necessity for authority to provide competitive resold interexchange
10 telecommunications services, except local exchange services shall be, and hereby is, granted,
11 conditioned upon its compliance with the conditions recommended by Staff as set forth in Findings of
12 Fact Nos. 13 and 14, above.

13 IT IS FURTHER ORDERED that Staff's recommendations set forth in Findings of Fact Nos.
14 13 and 14 above are hereby adopted.

15 IT IS FURTHER ORDERED that Global Touch Telecom, Inc. shall comply with the adopted
16 Staff recommendations as set forth in Findings of Fact Nos. 13 and 14 above.

17 IT IS FURTHER ORDERED that if Global Touch Telecom, Inc. fails to meet the timeframes
18 outlined in Findings of Fact. No. 14 above that the Certificate conditionally granted herein shall
19 become null and void after due process.

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1 IT IS FURTHER ORDERED that Global Touch Telecom, Inc. shall not require its Arizona
2 customers to pay advances, prepayments or deposits for any of its products or services.

3 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

4 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.
5
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7 CHAIRMAN

COMMISSIONER

9 COMMISSIONER

COMMISSIONER

COMMISSIONER

10
11 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
12 Director of the Arizona Corporation Commission, have
13 hereunto set my hand and caused the official seal of the
Commission to be affixed at the Capitol, in the City of Phoenix,
this ____ day of _____, 2006.

14
15 BRIAN C. McNEIL
16 EXECUTIVE DIRECTOR
17
18

19 DISSENT _____
20

21 DISSENT _____
22

23 AB:mj
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1 SERVICE LIST FOR: GLOBAL TOUCH TELECOM, INC.

2 DOCKET NO.: T-20428A-05-0800

3 Patrick D. Crocker
4 EARLY, LENNON, CROCKER & BARTOSIEWIECZ
5 900 Comerica Building
6 Kalamazoo, MI 49007
7 Attorney for Global Touch Telecom, Inc.

8 Christopher Kempley, Chief Counsel
9 Legal Division
10 ARIZONA CORPORATION COMMISSION
11 1200 West Washington Street
12 Phoenix, Arizona 85007

13 Ernest G. Johnson, Director
14 Utilities Division
15 ARIZONA CORPORATION COMMISSION
16 1200 West Washington Street
17 Phoenix, Arizona 85007

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COMMISSIONERS
JEFF HATCH-MILLER - Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES



BRIAN C. McNEIL
Executive Director

ARIZONA CORPORATION COMMISSION

DATE: April 11, 2006

DOCKET NO: T-04116A-05-0009

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Amy Bjelland. The recommendation has been filed in the form of an Order on:

ECONODIAL, LLC

(CC&N CANCELLATION)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

APRIL 20, 2006

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

MAY 2 AND 3, 2006

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.


BRIAN C. McNEIL
EXECUTIVE DIRECTOR

1
2 **BEFORE THE ARIZONA CORPORATION COMMISSION**

3 COMMISSIONERS

4 JEFF HATCH-MILLER Chairman
5 WILLIAM A. MUNDELL
6 MARC SPITZER
7 MIKE GLEASON
8 KRISTIN K. MAYES

9 IN THE MATTER OF THE APPLICATION OF
10 ECONODIAL, LLC FOR CANCELLATION OF
11 ITS CERTIFICATE OF CONVENIENCE AND
12 NECESSITY TO PROVIDE RESOLD LONG
13 DISTANCE TELECOMMUNICATION SERVICES.

DOCKET NO. T-04116A-05-0009

DECISION NO. _____

ORDER

14 Open Meeting
15 May 2 and 3, 2006
16 Phoenix, Arizona

17 **BY THE COMMISSION:**

18 Having considered the entire record herein and being fully advised in the premises, the
19 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

20 FINDINGS OF FACT

21 1. Econodial, LLC ("Econodial" or "Applicant") has a Certificate of Convenience and
22 Necessity ("Certificate") to provide resold long distance telecommunications services in the State of
23 Arizona pursuant to Decision No. 65983 (June 17, 2003).

24 2. On January 7, 2005, Applicant filed an application for cancellation of its Certificate,
25 indicating that it does not have any customers in Arizona.

26 3. On January 18, 2005, the Commission's Utilities Division ("Staff") filed a Letter of
27 Insufficiency and First Set of Data Requests.

28 4. On February 15, 2005, Applicant filed additional information in the docket relating to
its request to cancel its Certificate.

5. On February 16, 2005, Staff filed a Letter of Insufficiency and Second Set of Data
Requests. This request asked Econodial to provide a copy of the legal notice of the application to
cancel its Certificate in all counties affected by the Application. Service of the Second Set of Data

1 Requests was acknowledged with the signature of Econodial's Vice President of Regulatory Affairs,
2 Stanley H. Golove, on the certified mail's return receipt. Econodial has not filed anything further in
3 this docket, nor has Staff been able to contact Econodial by telephone since this Second Set of Data
4 Requests.

5 6. On March 20, 2006, Staff filed a Staff Report, recommending approval of the
6 application to cancel Applicant's Certificate without a hearing. Staff further recommended waiving
7 the requirement that Econodial file an affidavit of publication that legal notice was provided
8 statewide to discontinue resold long distance telecommunications services.

9 7. During 2004, Econodial had approximately 30 customers in Arizona, all of whom
10 voluntarily changed carriers during that year. Staff stated that Econodial did not send notice to its
11 customers in Arizona because it had no residential or business customers in the last months of
12 service. No affiliates of Econodial offer telecommunications services in Arizona.

13 8. Econodial was not authorized to collect advances, deposits or prepayments and
14 therefore had no performance bond.

15 9. Staff indicated that there are no open complaints, inquiries or opinions concerning
16 Applicant.

17 10. Numerous other carriers in Arizona offer services similar to those that Applicant is
18 currently certificated to provide.

19 11. No Arizona customers will be affected by the requested cancellation.

20 CONCLUSIONS OF LAW

21 1. Applicant is a public service corporation within the meaning of Article XV of the
22 Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

23 2. The Commission has jurisdiction over Applicant and the subject matter of the
24 application.

25 3. The cancellation of Applicant's Certificate is in the public interest.

26 4. Pursuant to A.R.S. § 40-282, the Commission may issue this Decision without a
27 hearing.

28 5. Staff's recommendation is reasonable and should be adopted.

ORDER

IT IS THEREFORE ORDERED that the Certificate of Convenience and Necessity granted to Econodial, LLC, in Decision No. 65983 is hereby cancelled.

IT IS FURTHER ORDERED that the requirement that Econodial, LLC file an affidavit of publication that legal notice was provided statewide to discontinue resold long distance telecommunications services shall be, and hereby is, waived.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this ____ day of _____, 2006.

BRIAN C. McNEIL
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

AB:mj

1 SERVICE LIST FOR: ECONODIAL, LLC

2 DOCKET NO.: T-04116A-05-0009

3 Stanley H. Golove
4 Econodial, LLC
5 50 Broadway, Ste. 1205
6 New York, NY 10004

7 Christopher Kempley, Chief Counsel
8 Legal Division
9 ARIZONA CORPORATION COMMISSION
10 1200 West Washington Street
11 Phoenix, AZ 85007

12 Ernest G. Johnson, Director
13 Utilities Division
14 ARIZONA CORPORATION COMMISSION
15 1200 West Washington Street
16 Phoenix, AZ 85007

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COMMISSIONERS
JEFF HATCH-MILLER - Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES



BRIAN C. McNEIL
Executive Director

ARIZONA CORPORATION COMMISSION

DATE: May 11, 2006

DOCKET NO.: T-20444A-06-0128

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Amy Bjelland. The recommendation has been filed in the form of an Order on:

EMPIRE PAYPHONES, INC. aka EPI

(CC&N/COPT)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00 p.m.** on or before:

MAY 22, 2006

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

MAY 31 AND JUNE 1, 2006

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.


BRIAN C. McNEIL
EXECUTIVE DIRECTOR

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 JEFF HATCH-MILLER, Chairman
4 WILLIAM A. MUNDELL
5 MARC SPITZER
6 MIKE GLEASON
7 KRISTIN K. MAYES

8 IN THE MATTER OF THE APPLICATION OF
9 EMPIRE PAYPHONES, INC. a/k/ EPI FOR A
10 CERTIFICATE OF CONVENIENCE AND
11 NECESSITY TO PROVIDE CUSTOMER-OWNED
12 PAY TELEPHONE SERVICE IN THE STATE OF
13 ARIZONA.

DOCKET NO. T-20444A-06-0128

DECISION NO. _____

ORDER

14 Open Meeting
15 May 31 and June 1, 2006
16 Phoenix, Arizona

17 **BY THE COMMISSION:**

18 Having considered the entire record herein and being fully advised in the premises, the
19 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

20 **FINDINGS OF FACT**

21 1. On March 3, 2006, Empire Payphones, Inc. a/k/a EPI ("Applicant") filed with the
22 Commission an application for a Certificate of Convenience and Necessity ("Certificate") to provide
23 customer-owned pay telephone ("COPT") service in the State of Arizona.

24 2. On March 10, 2006, the Utilities Division ("Staff") issued a Letter of Insufficiency
25 and First Set of Data Requests to Applicant.

26 3. On March 31, 2006, Applicant filed its responses to Staff's Data Requests.

27 4. On May 1, 2006, Staff filed a Staff Report recommending approval of the application.

28 5. In Decision No. 55817 (December 10, 1987), the Commission found that COPT
providers were public service corporations subject to the jurisdiction of the Commission.

 6. In Decision No. 57797 (April 8, 1992), the Commission adopted A.A.C. R14-2-901
through R14-2-909 to regulate COPT providers.

 7. Decision No. 58535 (February 14, 1994) adopted a Generic Tariff that establishes
rates and minimum service standards applicable to COPT service.

8. Pursuant to A.R.S. § 40-282, the Commission may issue Decisions regarding COPT Certificates without a hearing.

9. Applicant has requested that a Certificate be granted and has indicated that it will provide COPT service pursuant to the rates, terms and conditions specified in the Generic COPT Tariff.

10. Staff stated that the Applicant has provided a copy of its customer information placard in compliance with the Generic Tariff.

11. Staff also stated that certain benefits accrue to the public in the form of increased pay telephone availability and that issuance of a Certificate is in the public interest.

CONCLUSIONS OF LAW

1. Applicant is a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

2. The Commission has jurisdiction over Applicant and the subject matter of the application.

3. The provision of COPT service in Arizona by Applicant is in the public interest.

4. Applicant is a fit and proper entity to receive a Certificate for providing COPT service in Arizona.

5. Staff's recommendation is reasonable and should be adopted.

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ORDER

IT IS THEREFORE ORDERED that the Application of Empire Payphones, Inc. a/k/a EPI for a Certificate of Convenience and Necessity for authority to provide customer-owned pay telephone service in Arizona shall be, and the same is, hereby granted.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this ____ day of _____, 2006.

BRIAN C. McNEIL
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

AB:mj

1 SERVICE LIST FOR:

EMPIRE PAYPHONES, INC. a/k/a EPI

2 DOCKET NO:

T-020444A-06-0128

3 Susan Duggan
4 Empire Payphones, Inc.
5 1490 Westfork Drive, Ste. G
6 Lithia Springs, GA 30122

7 Christopher Kempley, Chief Counsel
8 Legal Division
9 ARIZONA CORPORATION COMMISSION
10 1200 West Washington Street
11 Phoenix, AZ 85007

12 Ernest G. Johnson, Director
13 Utilities Division
14 ARIZONA CORPORATION COMMISSION
15 1200 West Washington Street
16 Phoenix, AZ 85007
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COMMISSIONERS
JEFF HATCH-MILLER - Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES



BRIAN C. McNEIL
Executive Director

ARIZONA CORPORATION COMMISSION

DATE: OCTOBER 25, 2005

DOCKET NO: SW-04316A-05-0371

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Amy Bjelland. The recommendation has been filed in the form of an Opinion and Order on:

**ENTRADA DEL ORO SEWER COMPANY
(CC&N)**

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

NOVEMBER 3, 2005

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

NOVEMBER 8, 2005 and NOVEMBER 9, 2005

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250. For information about the Open Meeting, contact the Executive Secretary's Office at (602) 542-3931.


BRIAN C. McNEIL
EXECUTIVE DIRECTOR

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 JEFF HATCH-MILLER, Chairman
4 WILLIAM A. MUNDELL
5 MARC SPITZER
6 MIKE GLEASON
7 KRISTIN K. MAYES

8 IN THE MATTER OF THE APPLICATION OF
ENTRADA DEL ORO SEWER COMPANY FOR A
CERTIFICATE OF CONVENIENCE AND
NECESSITY FOR WASTEWATER SERVICE.

DOCKET NO. SW-04316A-05-0371

DECISION NO. _____

OPINION AND ORDER

9 DATE OF HEARING:

September 16, 2005

10 PLACE OF HEARING:

Phoenix, Arizona

11 ADMINISTRATIVE LAW JUDGE:

Amy Bjelland

12 APPEARANCES:

13 Mr. Michael W. Patten, ROSHKA, DeWULF &
PATTEN, PLC, on behalf of Applicant; and

14 Mr. Keith Layton, Staff Attorney, Legal
Division, on behalf of the Utilities Division of
the Arizona Corporation Commission.

15 **BY THE COMMISSION:**

16 On May 24, 2005, Entrada Del Oro Sewer Company ("Company" or "Applicant"), filed an
17 application for a Certificate of Convenience and Necessity ("Certificate") with the Arizona
18 Corporation Commission ("Commission") to provide wastewater service to a development known as
19 Entrada Del Oro, located in Pinal County, Arizona, approximately four miles east of Gold Canyon.
20

21 On May 31, 2005 and June 8, 2005, the Company filed Supplements to its application.

22 On June 22, 2005, the Commission's Utilities Division Staff ("Staff") filed a letter notifying
23 Applicant that its application was administratively sufficient pursuant to the requirements of A.A.C.
24 R14-2-602(A)(2).

25 By Procedural Order issued June 24, 2005, a hearing was scheduled to commence on
26 September 15, 2005.

27 By Procedural Order issued June 27, 2005, the hearing was rescheduled to commence on
28 September 16, 2005.

1 On July 21, 2005, the Company filed a Notice of Filing Affidavit of Publication as required
2 by the Commission's Procedural Order of June 24, 2005.

3 On July 27, 2005, the Company filed a Notice of Filing Affidavit of Mailing as required by
4 the Commission's Procedural Order dated June 24, 2005.

5 On August 8, 2005, the Company filed its Approval of Sewer Franchise from Pinal County.

6 On August 11, 2005, the Staff filed its Staff Report in this matter. Staff recommended
7 approval of the application subject to certain conditions.

8 On September 16, 2005, a hearing was convened before a duly authorized Administrative
9 Law Judge of the Commission at its offices in Phoenix, Arizona. At the conclusion of the hearing,
10 the matter was taken under advisement pending submission of a Recommended Opinion and Order.

11 * * * * *

12 Having considered the entire record herein and being fully advised in the premises, the
13 Commission finds, concludes, and orders that:

14 **FINDINGS OF FACT**

15 1. Applicant is a corporation formed for the purpose of providing wastewater utility
16 service to the Entrada Del Oro development, an area consisting of approximately 452 acres, located
17 in Pinal County approximately four miles east of Gold Canyon (Ex. A-1). Arizona Water Company
18 was granted a CC&N to deliver water service to the same development in Decision No. 66235
19 (September 16, 2003).

20 2. Applicant received a request for service to provide wastewater utility service from the
21 developer of the Entrada Del Oro subdivision. The developer of the subdivision contacted several
22 nearby wastewater utility service providers; however, the companies did not indicate interest in
23 serving the project, which is surrounded by state and federal lands (Ex. S-1 at 1; Tr. at 7).

24 3. Applicant plans to finance the wastewater utility system with \$4.4 million of paid-in
25 capital and \$1.9 million in the form of a contribution from Engle Homes, the purchaser of Phase 1,
26 the first phase of 372 lots (Ex. S-1 at 1; Tr. at 14). Engle Homes is contributing the installation of the
27 on-site collection system for Phase 1 of the development (Ex. S-1 at 1). Applicant anticipates that
28 collection systems of future phases of the development will be installed and contributed by

1 homebuilders (*Id.*). Applicant is funding the construction of the treatment facility, building, walls,
2 landscaping, force main and other improvements (*Id.*).

3 4. The proposed facility is a 0.3 million gallons per day Marwood package wastewater
4 treatment plant (Ex. S-1 at 1; Ex. S-1, Ex. 2 ("Engineering Report")). Applicant has obtained a
5 permit from the United States Environmental Protection Agency National Pollutant Discharge
6 Elimination System that authorizes treated effluent to be disposed of in a dry wash (Ex. S-1 at 1).
7 The Arizona Department of Environmental Quality ("ADEQ") approved the proposed on-site
8 wastewater treatment and disposal system by issuing an Aquifer Protection Permit on May 17, 2005.

9 5. Pursuant to Section 208 of the Federal Water Pollution Control Act, each state is
10 required to develop and implement area-wide water quality management plans for pollution control
11 purposes. The Central Arizona Association of Governments ("CAAG") has been designated as the
12 area-wide water quality management planning agency for Pinal County. According to Staff, ADEQ
13 certified that Applicant's Entrada Del Oro Water Management System Plan Amendment is consistent
14 with the CAAG Water Quality Management Plan (Ex. S-1 at 2).

15 6. Pursuant to the Commission's rules, Applicant provided five-year projections for plant
16 values, operating revenues and expenses, and number of customers. Such projections are necessary
17 to establish rates for new companies due to the lack of historical data. Staff reviewed Applicant's
18 projections and recommended that the Commission find that the projected fair value rate base will be
19 \$3,343,970 (Ex. S-1 at 2).

20 7. Applicant proposed an initial residential flat rate of \$70.00. Staff found Applicant's
21 proposed residential rate to be reasonable and recommended approval of that rate. Applicant
22 recommended proposed an initial school service flat rate of \$7.00 per student. Staff found \$5.60 to
23 be a more reasonable estimated rate of students' water use at school and recommended approval of
24 Staff's recommended flat rate for school service per student. Applicant's proposed rates and charges
25 for initial wastewater service are as follows:

26 ...

27 ...

MONTHLY WASTEWATER SERVICECompany ProposedStaff Recommended

Residential Service	\$70.00	\$70.00
School Service – Per Student	7.00	5.60

OTHER RATES AND CHARGES

Establishment of Service – Regular Hours	\$30.00	\$30.00
Establishment of Service – After Hours	60.00	60.00
Re-establishment of Service (Within 12 Months)	*	*
Reconnection – Delinquent	60.00	60.00
Customer Deposit	**	**
Deposit Interest	3.50%	**
NSF Check Charge	35.00	25.00
Late Payment Penalty – Per Month	1.50%	1.50%
Deferred Payment Interest – Per Month	1.50%	1.50%
Main Extensions/Additional Facilities	Cost	Cost
Revenue Taxes & Assessments	***	***

* Per A.A.C. R14-2-603(D) – Months off system times the minimum charge.

** Per A.A.C. R14-2-603(B)

*** Per A.A.C. R14-2-608(D)

8. Based on its review, Staff recommended that the Commission grant the Company's Application for a Certificate to provide wastewater services, subject to the following conditions:

(a) The Company must use the depreciation rates delineated in Table 1 of Staff's Engineering Report;

(b) The Company must file documentation with Docket Control by December 31, 2007, which demonstrates that the system is in service;

(c) The Company must charge Staff's recommended rates and charges;

(d) The Company must file a permanent rate application in its sixth year of operations, using the fifth year as the test year; and

(e) The Company must file documentation of the date service is first provided within 30 days of that date.

CONCLUSIONS OF LAW

1. Applicant is a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. §40-281 *et seq.*

2. The Commission has jurisdiction over Applicant and the subject matter of the application.

3. Notice of the application was provided in accordance with law.

4. There is a public need and necessity for wastewater utility service in the proposed service territory as set forth in Exhibit A attached hereto.

5. Applicant is a fit and proper entity to receive a wastewater CC&N to include the service area more fully described in Exhibit A attached hereto, subject to compliance with the conditions set forth above.

6. Staff's recommendation for approval of the application is reasonable and should be adopted.

ORDER

IT IS THEREFORE ORDERED that the application of Entrada Del Oro Sewer Company for a new Certificate of Convenience and Necessity to provide wastewater service to the area in Pinal County, Arizona, as described in Exhibit A attached hereto, is approved subject to the conditions and requirements recommended by Staff, as set forth above.

IT IS FURTHER ORDERED that Entrada Del Oro Sewer Company shall use the depreciation rates delineated in Table 1 of Staff's Engineering Report.

IT IS FURTHER ORDERED that Entrada Del Oro Sewer Company shall file documentation with Docket Control by December 31, 2007, which demonstrates that the system is in service.

IT IS FURTHER ORDERED that Entrada Del Oro Sewer Company shall charge Staff's recommended rates and charges.

IT IS FURTHER ORDERED that Entrada Del Oro Sewer Company shall file a permanent rate application in its sixth year of operations, using the fifth year as the test year.

IT IS FURTHER ORDERED that Entrada Del Oro Sewer Company shall file documentation with the Commission's Docket Control of the date service is first provided, within 30 days of that date.

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1 IT IS FURTHER ORDERED that failure by Entrada Del Oro Sewer Company to comply with
2 Staff's recommendations within the specified time frames set forth above, will render the Certificate
3 null and void.

4 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.
6
7

8 CHAIRMAN

COMMISSIONER

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10 COMMISSIONER

COMMISSIONER

COMMISSIONER

11
12 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
13 Director of the Arizona Corporation Commission, have
14 hereunto set my hand and caused the official seal of the
Commission to be affixed at the Capitol, in the City of Phoenix,
this ____ day of _____, 2005.

15
16 BRIAN C. McNEIL
EXECUTIVE DIRECTOR

17
18 DISSENT _____

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20 DISSENT _____
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1 SERVICE LIST FOR:

ENTRADA DEL ORO SEWER COMPANY

2 DOCKET NO.:

SW-04316A-05-0371

3
4 Michael W. Patten
5 ROSHKA HEYMAN & DeWULF
6 One Arizona Center
7 400 East Van Buren Street, Ste. 800
8 Phoenix, AZ 85004

9 Christopher Kempley, Chief Counsel
10 Legal Division
11 ARIZONA CORPORATION COMMISSION
12 1200 West Washington Street
13 Phoenix, Arizona 85007

14 Ernest Johnson, Director
15 Utilities Division
16 ARIZONA CORPORATION COMMISSION
17 1200 West Washington Street
18 Phoenix, Arizona 85007
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COMMISSIONERS
JEFF HATCH-MILLER - Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES



BRIAN C. McNEIL
Executive Director

ARIZONA CORPORATION COMMISSION

October 25, 2005

TO: ALL PARTIES OF RECORD

RE: Entrada Del Oro Sewer Company – CC&N
DOCKET NO. SW-04316A-05-0371

The Recommended Order in the above captioned matter that was mailed to you on October 19, 2005, inadvertently omitted Exhibit A.

Please find enclosed Exhibit A of the Recommended Order. The deadline for filing exceptions is unchanged.

Sincerely Yours,



Amy B. Bjelland
Administrative Law Judge

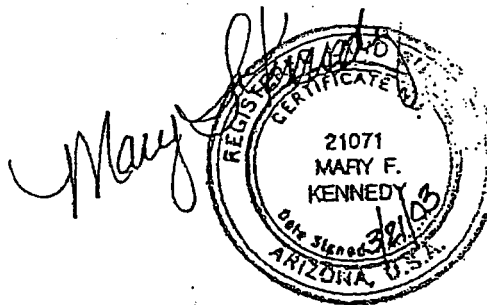
EXHIBIT A

LEGAL DESCRIPTION
 ENTRADA DEL ORO
 PINAL COUNTY, ARIZONA

Government Lots 1, 2, and 3, the Southeast quarter of the Southwest quarter, the Southeast quarter of the Northwest quarter, the Northeast quarter of the Southwest quarter, the South half of the Northeast quarter, the Northeast quarter of the Northwest quarter, and the North half of the Northeast quarter of Section 30, Township 1 South, Range 10 East, of the Gila and Salt River Base and Meridian, Pinal County, Arizona, described as follows:

Commencing at the Southwest corner of Section 30, said point being a found G.L.O. brass cap, thence North 0 degrees 52 minutes 48 seconds East, 1319.82 feet along the west line of Section 30 to the Southwest corner of GLO Lot 3, said point being the POINT OF BEGINNING; thence North 0 degrees 52 minutes 48 seconds East, 1319.82 feet to the West quarter corner of Section 30, said point being a found G.L.O. brass cap; thence North 0 degrees 51 minutes 03 seconds East, 2641.20 feet to the Northwest corner of Section 30; thence South 89 degrees 03 minutes 34 seconds East, 2788.95 feet to the North quarter corner of Section 30; thence South 89 degrees 03 minutes 34 seconds East, 2637.30 feet to the Northeast corner of Section 30; thence South 1 degrees 01 minutes 42 seconds West, 2634.15 feet to the East quarter corner of Section 30; thence North 89 degrees 08 minutes 02 seconds West, 2633.33 feet to the Center of Section 30; thence South 0 degrees 56 minutes 31 seconds West, 2640.91 feet to the South quarter corner of Section 30; thence North 89 degrees 06 minutes 28 seconds West, 1318.75 feet to the Southwest corner of the Southeast quarter of the Southwest quarter of Section 30; thence North 0 degrees 56 minutes 35 seconds East, 1320.15 feet to the Southeast corner of GLO Lot 3; thence North 89 degrees 07 minutes 15 seconds West, 1464.61 feet to the Southwest corner of GLO Lot 3 and the POINT OF BEGINNING.

Containing 452.671 acres, more or less, and being subject to easements of record.



DECISION NO. _____

COMMISSIONERS
JEFF HATCH-MILLER - Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES



BRIAN C. McNEIL
Executive Director

ARIZONA CORPORATION COMMISSION

DATE: April 11, 2006
DOCKET NO: T-03842A-06-0051

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Amy Bjelland. The recommendation has been filed in the form of an Order on:

ESCHELON TELECOM, INC.

(CC&N CANCELLATION)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00 p.m.** on or before:

APRIL 20, 2006

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

MAY 2 AND 3, 2006

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.


BRIAN C. McNEIL
EXECUTIVE DIRECTOR

1
2 **BEFORE THE ARIZONA CORPORATION COMMISSION**

3 **COMMISSIONERS**

4 JEFF HATCH-MILLER, Chairman
5 WILLIAM A. MUNDELL
6 MARC SPITZER
7 MIKE GLEASON
8 KRISTIN K. MAYES

9 IN THE MATTER OF THE APPLICATION OF
10 ESCHELON TELECOM, INC. FOR
11 CANCELLATION OF THE CERTIFICATE OF
12 CONVENIENCE AND NECESSITY OF ITS
13 SUBSIDIARY, ADVANCED TELCOM, INC., TO
14 PROVIDE COMPETITIVE RESOLD AND
15 COMPETITIVE LOCAL EXCHANGE SERVICE
16 IN ARIZONA.

DOCKET NO. T-03842A-06-0051

DECISION NO. _____

ORDER

17 Open Meeting
18 May 2 and 3, 2006
19 Phoenix, Arizona

20 **BY THE COMMISSION:**

21 Having considered the entire record herein and being fully advised in the premises, the
22 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

23 **FINDINGS OF FACT**

24 1. On April 24, 2001, the Commission issued Decision No. 63600 which granted to
25 Advanced Telcom, Inc. ("ATI") a Certificate of Convenience and Necessity ("Certificate") to provide
26 competitive resold and competitive local exchange service in Arizona.

27 2. On December 31, 2004, Eschelon Telecom, Inc. ("Eschelon") acquired all the stock of
28 ATI, which then became a wholly owned subsidiary of Eschelon.

3. On January 27, 2006, Eschelon filed an application to cancel ATI's Certificate.

4. On March 17, 2006, the Commission's Utilities Division Staff ("Staff") filed its Staff
Report recommending approval of the application.

5. Eschelon stated in its application that ATI's Arizona intrastate revenues reported on its
2004 Annual Report to the Commission were likely attributable to occasional travel card usage
within the state, as ATI had no residential or business access lines in Arizona, or any Arizona assets

1 associated with the revenue.

2 6. Staff indicated that there are no open complaints, inquiries or opinions concerning
3 Applicant.

4 7. Numerous other carriers in Arizona offer services similar to those that Applicant is
5 currently certificated to provide.

6 8. No Arizona customers will be affected by the requested cancellation.

7 **CONCLUSIONS OF LAW**

8 1. Applicant is a public service corporation within the meaning of Article XV of the
9 Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

10 2. The Commission has jurisdiction over Applicant and the subject matter of the
11 application.

12 3. The cancellation of Applicant's CC&N is in the public interest.

13 4. Pursuant to A.R.S. § 40-282, the Commission may issue this Decision without a
14 hearing.

15 5. Staff's recommendation is reasonable and should be adopted.

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ORDER

IT IS THEREFORE ORDERED that the Certificate of Convenience and Necessity granted to Advanced Telcom, Inc. in Decision No. 63600 is hereby cancelled.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this ____ day of _____, 2006.

BRIAN C. McNEIL
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

AB:mj

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SERVICE LIST FOR: ESCHELON TELECOM, INC.

DOCKET NO.: T-03842A-06-0051

Cathy Murray
Eschelon Telecom, Inc.
730 Second Avenue South, Ste. 900
Minneapolis, MN 55402

Christopher Kempley, Chief Counsel
Legal Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, AZ 85007

Ernest G. Johnson, Director
Utilities Division
ARIZONA CORPORATION COMMISSION
1200 West Washington
Phoenix, AZ 85007

COMMISSIONERS
JEFF HATCH-MILLER - Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES



BRIAN C. McNEIL
Executive Director

ARIZONA CORPORATION COMMISSION

DATE: March 20, 2006

DOCKET NO: T-04191A-03-0482

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Amy Bjelland. The recommendation has been filed in the form of an Order on:

GRINGO PASS INC.

(CC&N/COPT)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

MARCH 29, 2006

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

APRIL 4 AND 5, 2006

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.


BRIAN C. McNEIL
EXECUTIVE DIRECTOR

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 JEFF HATCH-MILLER, Chairman
4 WILLIAM A. MUNDELL
5 MARC SPITZER
6 MIKE GLEASON
7 KRISTIN K. MAYES

8 IN THE MATTER OF THE APPLICATION OF
GRINGO PASS INC. FOR A CERTIFICATE OF
CONVENIENCE AND NECESSITY TO PROVIDE
CUSTOMER-OWNED PAY TELEPHONE
SERVICE IN THE STATE OF ARIZONA.

DOCKET NO. T-04191A-03-0482

DECISION NO. _____

ORDER

9 Open Meeting
10 April 4 and 5, 2006
11 Phoenix, Arizona

12 **BY THE COMMISSION:**

13 Having considered the entire record herein and being fully advised in the premises, the
14 Commission finds, concludes, and orders that:

15 FINDINGS OF FACT

16 1. On July 14, 2003, Gringo Pass, Inc. ("Applicant") filed with the Arizona Corporation
17 Commission ("Commission") an application for a Certificate of Convenience and Necessity
18 ("Certificate") to provide customer-owned pay telephone ("COPT") service in the State of Arizona.

19 2. On July 17, 2003, Staff issued a Letter of Insufficiency and First Set of Data Requests
20 to Applicant.

21 3. On December 20, 2005, a Procedural Order was issued requesting Staff to file an
22 update on the status of the matter and indicate whether the matter should be administratively closed.

23 4. On January 20, 2006, Staff filed a Status Report in this docket indicating that
24 Applicant filed its response to Staff's First Set of Data Requests on January 5, 2006. Staff
25 recommended that the docket remain open pending Staff's review of Applicant's responses.

26 5. On March 9, 2006, the Commission's Utilities Division Staff ("Staff") filed a Staff
27 Report recommending approval of the application without a hearing.

28 6. In Decision No. 55817 (December 10, 1987), the Commission found that COPT
providers were public service corporations subject to the jurisdiction of the Commission.

7. In Decision No. 57797 (April 8, 1992), the Commission adopted A.A.C. R14-2-901 through R14-2-909 to regulate COPT providers.

8. Decision No. 58535 (February 14, 1994) adopted a Generic Tariff that establishes rates and minimum service standards applicable to COPT service.

9. Pursuant to A.R.S. § 40-282, the Commission may issue Decisions regarding COPT Certificates without a hearing.

10. Applicant has requested that a Certificate be granted and has indicated that it will provide COPT service pursuant to the rates, terms and conditions specified in the Generic COPT Tariff.

11. Applicant has payphone locations and submitted certification that it posted the required Notice of Application at its payphone locations.

12. Staff stated that the Applicant has provided a copy of its customer information placard in compliance with the Generic Tariff.

13. Staff also stated that increased pay telephone availability is in the public interest.

CONCLUSIONS OF LAW

1. Applicant is a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

2. The Commission has jurisdiction over Applicant and the subject matter of the application.

3. The provision of COPT service in Arizona by Applicant is in the public interest.

4. Applicant is a fit and proper entity to receive a Certificate for providing COPT service in Arizona.

5. Staff's recommendation is reasonable and should be adopted.

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ORDER

IT IS THEREFORE ORDERED that the Application of Gringo Pass, Inc. for a Certificate of Convenience and Necessity for authority to provide customer-owned pay telephone service in Arizona shall be, and the same is, hereby granted.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this ____ day of _____, 2006.

BRIAN C. McNEIL
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

AB:mj

SERVICE LIST FOR:

GRINGO PASS, INC.

DOCKET NO:

T-04191A-03-0482

E. E. Gay

Gringo Pass, Inc.

P.O. Box 266

Gringo Pass, AZ 85341

Christopher Kempley, Chief Counsel

Legal Division

ARIZONA CORPORATION COMMISSION

1200 West Washington Street

Phoenix, AZ 85007

Ernest G. Johnson, Director

Utilities Division

ARIZONA CORPORATION COMMISSION

1200 West Washington Street

Phoenix, AZ 85007

COMMISSIONERS
JEFF HATCH-MILLER - Chairman
WILLIAM A. MUNDELL
MIKE GLEASON
KRISTIN K. MAYES
BARRY WONG



BRIAN C. MCNEIL
Executive Director

ARIZONA CORPORATION COMMISSION

DATE: AUGUST 8, 2006
DOCKET NO: W-20422A-05-0659
TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Amy Bjelland. The recommendation has been filed in the form of an Opinion and Order on:

**HASSAYAMPA UTILITIES COMPANY
(CC&N)**

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

AUGUST 17, 2006

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

AUGUST 22, 2006 and AUGUST 23, 2006

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Secretary's Office at (602) 542-3931.


BRIAN C. MCNEIL
EXECUTIVE DIRECTOR

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 JEFF HATCH-MILLER, Chairman
4 WILLIAM A. MUNDELL
5 MIKE GLEASON
6 KRISTIN K. MAYES
7 BARRY WONG

8 IN THE MATTER OF THE APPLICATION OF
9 HASSAYAMPA UTILITIES COMPANY, INC.
10 FOR A CERTIFICATE OF CONVENIENCE AND
11 NECESSITY.

DOCKET NO. SW-20422A-05-0659

DECISION NO. _____

12 **OPINION AND ORDER**

13 DATE OF HEARING: June 22, 2006

14 PLACE OF HEARING: Phoenix, Arizona

15 ADMINISTRATIVE LAW JUDGE: Amy Bjelland

16 APPEARANCES: Michael Patten, ROSHKA, DeWULF & PATTEN, on
17 behalf of Hassayampa Utilities; and

18 Linda Fisher, Staff Attorney, Legal Division, on behalf
19 of the Utilities Division for the Arizona Corporation
20 Commission.

21 **BY THE COMMISSION:**

22 On September 19, 2006, Hassayampa Utilities Company, Inc. ("Hassayampa", "Applicant",
23 or "Company") filed with the Arizona Corporation Commission ("Commission") an application for a
24 Certificate of Convenience and Necessity ("Certificate") to provide wastewater service to the
25 Hassayampa Ranch development in Maricopa County, Arizona ("Application").

26 On October 19, 2005, the Commission's Utilities Division ("Staff") issued an insufficiency
27 letter.

28 On October 21, 2005 and January 10, 2006, Hassayampa filed responses to Staff's
insufficiency letter.

On March 27, 2006, the Commission's Utilities Division ("Staff") filed a sufficiency letter¹.

¹ This letter was inadvertently filed under an incorrect docket number. A duplicate sufficiency letter was filed in the correct docket on April 11, 2006.

1 On April 11, 2006, by Procedural Order, the hearing in this matter was rescheduled for June
2 22, 2006².

3 On April 26, 2006, Hassayampa filed its notices of filing affidavit of mailing and of
4 publication.

5 On May 26, 2006, Staff docketed its Staff Report, recommending approval of the Application
6 subject to several conditions.

7 On June 9, 2006, Hassayampa filed its Objections to Staff Report.

8 On June 22, 2006, a hearing convened before a duly authorized Administrative Law Judge of
9 the Commission. Both parties were represented by counsel. At the conclusion of the hearing, the
10 matter was taken under advisement pending issuance of a Recommended Opinion and Order.

11 On June 30, 2006, Staff filed a Notice of Errata to make corrections to an exhibit it entered at
12 hearing.

13 * * * * *

14 Having considered the entire record herein and being fully advised in the premises, the
15 Commission finds, concludes, and orders that:

16 **FINDINGS OF FACT**

17 1. Applicant is a corporation formed for the purpose of providing wastewater utility
18 service within portions of Maricopa County, Arizona to the Hassayampa Ranch development
19 ("Hassayampa Ranch"). Hassayampa Ranch is located west of the Town of Buckeye and three miles
20 north of Interstate 10, and consists of approximately 2,050 acres. Applicant is a wholly owned
21 subsidiary of Global Water Resources, Inc.

22 2. Harvard Investments, Inc. is the developer of Hassayampa Ranch, and it is expected
23 that by the end of the fifth year of operations, Hassayampa will serve approximately 3,000 residential
24 customers and 1 irrigation customer. Hassayampa Ranch Ventures, LLC, requested wastewater
25 service from Applicant. Water utility service will be provided by the Water Utility of Greater
26 Tonopah.

27 ² By Procedural Order on March 28, 2006, a hearing was scheduled for June 29, 2006. On April 7, 2006, Hassayampa
28 filed a Motion to Reschedule Hearing Date stating that counsel would be unavailable for the hearing and that counsel for
Staff agreed with the rescheduling of the hearing to either June 22 or June 23, 2006.

1 3. Hassayampa will install an enclosed sequential batch reactor wastewater treatment
2 plant in two phases. The plant will have an ultimate capacity of 3.2 million gallons per day ("MGD")
3 of wastewater flow. Staff concluded that the Company will have adequate treatment capacity to
4 service the expected growth in the requested area.

5 4. The treated effluent will be disposed of in surface water impoundment systems such as
6 irrigation and ponds. Graham Symmonds, Senior Vice President of Operations and Compliance for
7 Global Water Resources, Inc., testified that initially there will be a one MGD treatment plant. Mr.
8 Symmonds stated that Hassayampa has 19.7 acres set aside for the treatment facility, with the option
9 of acquiring additional land if necessary to facilitate a regional approach to providing wastewater
10 utility services. Mr. Symmonds also testified that Global Water Resources, Inc., has a "very high
11 mandate for reclaimed water use," and therefore requires developers to use reclaimed water to the
12 largest possible extent. Tr. at 20. Mr. Symmonds further testified that for golf courses and irrigation
13 of any boulevard areas throughout the development, Hassayampa will provide reclaimed water. Tr.
14 at 25.

15 5. The Maricopa County Environmental Services Department ("MCESD") requires the
16 proposed treatment plant and sewage collection system to obtain Certificates of Approval to
17 Construct ("ATC") and Approval of Construction ("AOC"). Staff recommended that Hassayampa
18 file with Docket Control, as a compliance item in this docket, copies of the ATC issued by MCESD
19 for the proposed Phase I treatment plant and sewer collection system no later than July 1, 2007. Staff
20 further recommended that Hassayampa file with Docket Control, as a compliance item in this docket,
21 copies of the AOC issued by MCESD for the proposed Phase I treatment plant and sewer collection
22 system no later than April 30, 2008.

23 6. At hearing, Dorothy Hains, Utility Engineer for Commission Staff, recommended that
24 Hassayampa file a pretreatment tariff with the Commission when it becomes available. Tr. at 28.
25 Mr. Symmonds testified that Hassayampa supports the pretreatment tariff concept. Tr. at 23. He
26 explained that a pretreatment tariff relates to the Clean Water Act and is for industrial wastewater
27 utility customers. Tr. at 23. Mr. Symmonds stated that a pretreatment tariff ensures that if such a
28 customer discharges something into the sewer that causes a permit violation or fails to maintain

1 permit compliance, Hassayampa could shut that customer down. Tr. at 24.

2 7. Sewer companies are required by the Arizona Department of Environmental Quality
3 ("ADEQ") to obtain an Aquifer Protection Permit ("APP") and/or Arizona Pollutant Discharge
4 Elimination System ("AZPDES") permit before the plant can be placed in service. Approval by the
5 Maricopa Association of Governments ("MAG") for Section 208 Plan amendment will also be
6 necessary. Hassayampa has applied for, but not yet received, its 208 Plan approval. Staff
7 recommended that Hassayampa file with Docket Control, as a compliance item in this docket, a copy
8 of the MAG approved 208 Plan with a map of Hassayampa's 208 Master Plan boundary no later than
9 April 30, 2007. Staff further recommended that Hassayampa file with Docket Control, as a
10 compliance item in this docket, a copy of the notice issued by ADEQ showing Hassayampa's APP
11 and/or AZPDES has been approved no later than April 30, 2008.

12 8. Hassayampa has estimated costs of the plant to serve Hassayampa Ranch at year five
13 to be \$16,058,300. Staff concluded that the estimated costs are reasonable and appropriate for this
14 project. However, no "used and useful" determination of the proposed plant in service was made,
15 and no conclusions should be inferred for rate making or rate base purposes.

16 9. Staff estimated that Applicant's fair value rate base would be \$4,464,201 in its fifth
17 year. We find Staff's projected fair value rate base for Hassayampa to be reasonable and appropriate.

18 10. Staff has developed typical and customary depreciation rates within a range of
19 anticipated equipment life, reflected in Table 1 of Exhibit 2, attached to the Staff Report. Staff
20 recommended that Hassayampa be ordered to adopt the depreciation rates by individual National
21 Association of Regulatory Utility Commissioners ("NARUC") category, as shown on Table 1 of
22 Exhibit 2 (Engineering Memorandum).

23 11. Hassayampa's advances-in-aid-of-construction ("AIAC") are estimated at the end of
24 year 5 to be \$9,255,920, representing approximately 57 percent of estimated gross capital
25 expenditures of \$16,058,300. For the same period, Hassayampa projects a net balance of \$0.00 for
26 contributions-in-aid-of-construction ("CIAC"). Generally, the total AIAC and CIAC should not
27 exceed 25 to 30 percent of the related estimated capital expenditures. Over-reliance on AIAC and
28 CIAC can lead to improperly capitalized private water and wastewater companies. However, Staff

1 noted that Hassayampa will have approximately 46 percent in equity capital at the end of year 5. The
2 total equity balance at that time is estimated to be \$7,976,530. A 46 percent equity balance will
3 provide some assurance as to Hassayampa's continued access to capital markets for further expansion
4 beyond year 5. In its Staff Report, Staff recommended that Hassayampa be required to make its initial
5 equity investment of \$7,150,000 in year one as indicated in its Pro Forma Balance Sheet (Sewer),
6 Attachment C to Hassayampa's Application. At hearing, Staff revised its recommendation to require
7 the Company to have no less than \$7,150,000 in equity by the end of the first year of operations; that
8 the Company should be required to file a notice that this condition has been satisfied 90 calendar days
9 after the end of the first year of operations; and that the Company agrees that subsequent equity
10 contributions may be governed by any decision reached in Docket No. W-00000C-06-0149³. Staff
11 testified that it anticipates that the Company's conformance to Docket No. W-00000C-06-0149 will
12 be evaluated in the Company's next general rate filing. Hassayampa concurred with Staff's language
13 as proposed at hearing. Tr. at 14.

14 12. Staff analyzed the Company's projected revenues and expenses for five years, but
15 concentrated on the fifth year of operation when breakeven or profitability is usually expected. In
16 year five, Staff projected that Hassayampa would have total revenues of \$1,928,427; total operating
17 expenses of \$1,570,480; and operating income of \$357,947. Staff recommended that the Company
18 be ordered to file a rate case in its sixth year of operations, using the fifth year as the test year.

19 13. Hassayampa requested rates based upon water usage. However, Staff recommended
20 adoption of a flat monthly fee of \$54.25 for 5/8 x 3/4 inch and 3/4 inch meter customers. Staff also
21 recommended a non-sufficient funds ("NSF") check charge of \$25.00, as this is consistent with the
22 industry standard. Hassayampa objected to Staff's proposed revenues, arguing that revenues should
23 be increased to reflect Staff's proposed depreciation rates. Hassayampa also argued that Staff's rate
24 multiples for larger meters do not reflect the extra capacity required to serve customers that require
25 larger meters.

26
27 ³ Generic docket for investigating different mechanisms for financing water and wastewater facilities
28 and related issues.

14. At hearing, Jamie Moe, Public Utility Analyst V, provided a revised schedule of recommended rates and charges that modified the rates and charges for larger meters. Cindy Liles, Chief Financial Officer and Senior Vice President for Growth Management for Hassayampa's parent company, Global Water Resources, Inc., testified that the revised rates and changes were acceptable to Hassayampa. Applicant's proposed rates and charges for initial wastewater service and Staff's recommendations as revised at hearing are as follows:

<u>Monthly Wastewater Service</u>	<u>Company Proposed</u>	<u>Staff Recommended</u>
<i>Residential & Commercial Service</i>		
5/8 x 3/4 inch	\$52.00	\$54.25
3/4 inch	52.00	54.25
One inch	130.00	135.00
1-1/2 inch	260.00	270.00
Two inch	416.00	430.00
Three inch	832.00	860.00
Four inch	1,300.00	1,350.00
Six inch	2,600.00	2,700.00
<u>Effluent Sales</u>		
General Irrigation (Per Acre Foot)	\$400.00	\$400.00
General Irrigation (Per 1,000 gallons)	1.23	1.23
<u>Other Rates and Charges</u>		
Establishment of Service – Regular Hours	\$30.00	\$30.00
Re-establishment of Service (Within 12 Months)	*	*
Reconnection (delinquent)	50.00	50.00
Customer Deposit	**	**
Deposit Interest	3.50%	**
NSF Check Charge	35.00	25.00
Late Payment Charge	1.50%	1.50%
(per month on unpaid balance)		
Deferred Payment Interest – Per Month	1.50%	1.50%
Main Extensions/Additional Facilities	Cost	Cost
Revenue Taxes & Assessments	***	***

* Per A.A.C. R14-2-603(D)

** Per A.A.C. R14-2-603(B)

*** Per A.A.C. R14-2-608(D)

15. The revised Staff recommended rates and charges, as agreed to by Hassayampa, are reasonable and appropriate.

16. Hassayampa must obtain a franchise from Maricopa County. Staff recommended that

1 Applicant file the franchise agreement with Docket Control, as a compliance item in this docket,
2 within one year of this Decision.

3 **Staff's Recommendations**

4 17. Based on its review, Staff recommended that the Commission grant Hassayampa's
5 Application for a Certificate to provide wastewater services, subject to the conditions as discussed
6 above and the following additional conditions:

7 (1) Hassayampa should file in Docket Control, as a compliance matter, a schedule
8 of its approved rates and charges within 30 days after the Decision in this matter is issued.

9 (2) Hassayampa should notify the Commission within 15 days of serving its first
10 customer through a memo to this docket in Docket Control as a compliance filing.

11 (3) Hassayampa should be authorized to collect from its customers a
12 proportionate share of any privilege, sales or use tax pursuant to A.A.C. R-14-2-409(D)(5).

13 18. Staff's recommendations in Findings of Fact Nos. 5, 6, 7, 9, 10, 11, 12, 16, and 17
14 are reasonable and appropriate.

15 **CONCLUSIONS OF LAW**

16 1. Applicant is a public service corporation within the meaning of Article XV of the
17 Arizona Constitution and A.R.S. §40-281 *et seq.*

18 2. The Commission has jurisdiction over Applicant and the subject matter of the
19 application.

20 3. Notice of the application was provided in accordance with law.

21 4. There is a public need and necessity for wastewater utility service in the proposed
22 service territory as set forth in Exhibit A attached hereto.

23 5. Applicant is a fit and proper entity to receive a wastewater CC&N to include the
24 service area more fully described in Exhibit A attached hereto, subject to compliance with the
25 conditions set forth herein.

26 6. Staff's recommendations contained in Findings of Fact Nos. 5, 6, 7, 9, 10, 11, 12, 16,
27 and 17 are reasonable and appropriate and should be approved.

28

1 7. Staff's recommendation for approval of the application with the conditions herein is
2 reasonable and should be adopted.

3 8. The rates and charges adopted herein are reasonable and appropriate.

4 **ORDER**

5 IT IS THEREFORE ORDERED that Hassayampa Utilities Company, Inc.'s application for a
6 Certificate of Convenience and Necessity to provide wastewater service to the area more fully
7 described in attached Exhibit A, shall be, and hereby is, approved, subject to the conditions
8 enumerated in the following ordering paragraphs.

9 IT IS FURTHER ORDERED that Hassayampa Utilities Company, Inc. shall file with Docket
10 Control, as a compliance item in this docket, copies of the Approval to Construct from Maricopa
11 County Environmental Services Department for the proposed Phase I treatment plant and sewer
12 collection system no later than July 31, 2007.

13 IT IS FURTHER ORDERED that Hassayampa Utilities Company, Inc. shall file with Docket
14 Control, as a compliance item in this docket, copies of the Approval of Construction Maricopa
15 County Environmental Services Department issues for the proposed Phase I treatment plant and
16 sewer collection system no later than April 30, 2008.

17 IT IS FURTHER ORDERED that Hassayampa Utilities Company, Inc. shall file with Docket
18 Control, as a compliance item in this docket, a copy of the Maricopa Association of Governments
19 approved 208 Plan with a map of Hassayampa Utilities Company, Inc.'s 208 Master Plan boundary
20 no later than April 30, 2007.

21 IT IS FURTHER ORDERED that Hassayampa Utilities Company, Inc. shall file with Docket
22 Control, as a compliance item in this docket, a copy of the notice issued by the Arizona Department
23 of Environmental Quality that Hassayampa Utilities Company, Inc.'s Aquifer Protection Permit
24 and/or Arizona Pollutant Discharge Elimination System has been approved no later than April 30,
25 2008.

26 IT IS FURTHER ORDERED that Hassayampa Utilities Company, Inc. shall have no less
27 than \$7,150,000 in equity by the end of the first year of operations and Hassayampa Utilities
28 Company, Inc. shall file a notice that this condition has been satisfied 90 calendar days after the

1 end of the first year of operations.

2 IT IS FURTHER ORDERED that subsequent equity contributions may be governed by any
3 decision reached in Docket No. W-00000C-06-0149.

4 IT IS FURTHER ORDERED that Hassayampa Utilities Company, Inc.'s conformance to
5 Docket No. W-00000C-06-0149 shall be evaluated in its next general rate filing.

6 IT IS FURTHER ORDERED that Hassayampa Utilities Company, Inc. may collect from its
7 customers a proportionate share of any privilege, sales or use tax pursuant to A.A.C. R-14-2-
8 409(D)(5).

9 IT IS FURTHER ORDERED that Hassayampa Utilities Company, Inc. shall file a rate case in
10 its sixth year of operations, using the fifth year as the test year.

11 IT IS FURTHER ORDERED that Hassayampa Utilities Company, Inc. shall adopt the
12 depreciation rates as shown in Table 1 of Exhibit 2 (Staff Report Engineering Memorandum).

13 IT IS FURTHER ORDERED that Hassayampa Utilities Company, Inc. shall file its franchise
14 agreement with Maricopa County with Docket Control, as a compliance item in this docket, within
15 one year of the Commission's decision in this case.

16 IT IS FURTHER ORDERED that Hassayampa Utilities Company, Inc. shall file a pre-
17 treatment tariff when it is available.

18 IT IS FURTHER ORDERED the following rates and charges are approved:

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Monthly Wastewater Service*Residential & Commercial Service*

5/8 x 3/4 inch	\$54.25
3/4 inch	54.25
One inch	135.00
1-1/2 inch	270.00
Two inch	430.00
Three inch	860.00
Four inch	1,350.00
Six inch	2,700.00

Effluent Sales

General Irrigation (Per Acre Foot)	\$400.00
General Irrigation (Per 1,000 gallons)	1.23

Other Rates and Charges

Establishment of Service – Regular Hours	\$30.00
Re-establishment of Service (Within 12 Months)	*
Reconnection (delinquent)	50.00
Customer Deposit	**
Deposit Interest	**
NSF Check Charge	25.00
Late Payment Charge	1.50%
(per month on unpaid balance)	
Deferred Payment Interest – Per Month	1.50%
Main Extensions/Additional Facilities	Cost
Revenue Taxes & Assessments	***

* Per A.A.C. R14-2-603(D)

** Per A.A.C. R14-2-603(B)

*** Per A.A.C. R14-2-608(D)

IT IS FURTHER ORDERED that the Hassayampa Utilities Company, Inc. shall file with Docket Control, as a compliance matter, a schedule of its approved rates and charges within 30 days after this Decision.

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1 IT IS FURTHER ORDERED that Hassayampa Utilities Company, Inc. shall notify the
2 Commission within 15 days of serving its first customer through a memo to this docket in Docket
3 Control, as a compliance filing.

4 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.
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8 CHAIRMAN

COMMISSIONER

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10 COMMISSIONER

COMMISSIONER

COMMISSIONER

11
12 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
13 Director of the Arizona Corporation Commission, have
14 hereunto set my hand and caused the official seal of the
15 Commission to be affixed at the Capitol, in the City of Phoenix,
16 this ____ day of _____, 2006.

17
18 BRIAN C. McNEIL
EXECUTIVE DIRECTOR

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20 DISSENT _____

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22 DISSENT _____
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1 SERVICE LIST FOR:

HASSAYAMPA UTILITIES

2 DOCKET NO.:

SW-20422A-05-0659

3 Michael Patten

4 ROSHKA, DeWULF & PATTEN

5 One Arizona Center

6 400 East Van Buren Street, Ste. 800

7 Phoenix, AZ 85004

8 Attorneys for Hassayampa Utilities Company

9 Christopher Kempley, Chief Counsel

10 Legal Division

11 ARIZONA CORPORATION COMMISSION

12 1200 West Washington Street

13 Phoenix, AZ 85007

14 Ernest G. Johnson, Director

15 Utilities Division

16 ARIZONA CORPORATION COMMISSION

17 1200 West Washington

18 Phoenix, AZ 85007

EXHIBIT "A"**PARCEL NO. 1:**

ALL OF SECTION 15, TOWNSHIP 2 NORTH, RANGE 5 WEST OF THE GILA AND SALT RIVER BASE AND MERIDIAN COUNTY, ARIZONA.

PARCEL NO. 2:

THE EAST HALF OF THE NORTHEAST QUARTER, THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER, THE WEST HALF AND THE SOUTHWEST QUARTER OF OF THE SOUTHEAST QUARTER OF SECTION 22, TOWNSHIP 2 NORTH, RANGE 5 WEST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA.

PARCEL NO. 3

ALL OF SECTION 16, TOWNSHIP 2 NORTH, RANGE 5 WEST OF THE GILA AND SALT RIVER BASE AND MERIDIAN COUNTY, ARIZONA;

EXCEPT THE NORTH HALF OF THE NORTHEAST QUARTER OF SAID SECTION; AND

EXCEPT ALL THE MINERAL INTEREST RESERVED TO THE STATE OF ARIZONA IN AND TO THE FOLLOWING LAND BY THE FOLLOWING INSTRUMENT;

AS TO THE SOUTH HALF OF SECTION 16, TOWNSHIP 2 NORTH, RANGE 5 WEST BY DEED DATED NOVEMBER 12, 1941 AND RECORDED AT BOOK 366 OF DEEDS, PAGE 563, RECORDS OF MARICOPA COUNTY, ARIZONA; AND

EXCEPT ALL THE MINERAL INTEREST RESERVED TO THE STATE OF ARIZONA IN AND TO THE FOLLOWING LAND BY THE FOLLOWING INSTRUMENT;

AS TO THE NORTHEAST QUARTER OF SECTION 16, TOWNSHIP 2 NORTH, RANGE 5 WEST BY DEED DATED MARCH 3, 1939 AND RECORDED AT BOOK 331 OF DEEDS, PAGE 569, RECORDS OF MARICOPA COUNTY, ARIZONA; AND

EXCEPT ALL THE MINERAL INTEREST RESERVED TO THE STATE OF ARIZONA IN AND TO THE FOLLOWING LAND BY THE FOLLOWING INSTRUMENT;

AS TO THE NORTHWEST QUARTER OF SECTION 16, TOWNSHIP 2 NORTH, RANGE 5 WEST, BY DEED DATED MAY 11, 1949 AND RECORDED AT DOCKET 401, PAGE 326, RECORDS OF MARICOPA COUNTY, ARIZONA.

PARCEL NO. 4:

THE EAST HALF OF SECTION 17, TOWNSHIP 2 NORTH, RANGE 5 WEST, OF THE GILA AND SALT RIVER BASE AND MERIDIAN, RECORDS OF MARICOPA COUNTY, ARIZONA.

PARCEL NO. 5 (BYU Parcel):

THE NORTH HALF OF THE NORTHEAST QUARTER OF SECTION 16, TOWNSHIP 2 NORTH RANGE 5 WEST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA.

COMMISSIONERS
JEFF HATCH-MILLER - Chairman
WILLIAM A. MUNDELL
MIKE GLEASON
KRISTIN K. MAYES
BARRY WONG



BRIAN C. MCNEIL
Executive Director

ARIZONA CORPORATION COMMISSION

DATE: September 5, 2006

DOCKET NO.: T-03566A-06-0320

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Amy Bjelland. The recommendation has been filed in the form of an Order on:

ICG TELECOM GROUP, INC.

(CC&N CANCELLATION)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

SEPTEMBER 14, 2006

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

SEPTEMBER 19 AND 20, 2006

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.


BRIAN C. McNEIL
EXECUTIVE DIRECTOR

1
2 **BEFORE THE ARIZONA CORPORATION COMMISSION**

3 COMMISSIONERS

4 JEFF HATCH-MILLER Chairman
5 WILLIAM A. MUNDELL
6 MIKE GLEASON
7 KRISTIN K. MAYES
8 BARRY WONG

9 IN THE MATTER OF THE APPLICATION OF
10 ICG TELECOM GROUP, INC. TO CANCEL
11 THEIR CERTIFICATE OF CONVENIENCE AND
12 NECESSITY FOR ALL
13 TELECOMMUNICATIONS SERVICES.

DOCKET NO. T-03566A-06-0320

DECISION NO. _____

ORDER

14 Open Meeting
15 September 19 and 20, 2006
16 Phoenix, Arizona

17 **BY THE COMMISSION:**

18 Having considered the entire record herein and being fully advised in the premises, the
19 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

20 FINDINGS OF FACT

21 1. On October 30, 1998, the Commission issued Decision No. 61220 which granted to
22 ICG Telecom Group, Inc. ("ICG" or "Applicant") a Certificate of Convenience and Necessity
23 ("Certificate") to provide competitive interLATA/intraLATA resold telecommunications services
24 except local exchange services in Arizona.

25 2. On March 20, 2003, the Commission issued Decision No. 65758 which granted ICG a
26 Certificate to provide competitive facilities-based and resold local exchange and exchange access
27 telecommunication services in Arizona.

28 3. On March 9, 2006, ICG filed an application to cancel its Certificates and tariffs for all
telecommunications services in Arizona granted in Decision No. 61220 and Decision No. 65758.

4. On August 29, 2006, the Commission's Utilities Division ("Staff") filed its Staff
Report recommending approval of the application.

5. Staff stated that ICG provided private line service for only two business customers in

1 Arizona, both of which requested that ICG disconnect their service almost three years prior to ICG
2 filing its application in this docket. For one of these customers, ICG's operations center was located
3 in Ohio; for the other, ICG resold service providing a private line connection. ICG does not have any
4 employees in Arizona.

5 6. ICG did not provide telecommunications service to residential customers. ICG does
6 not currently provide telecommunications service to any customer in Arizona.

7 7. ICG indicated to Staff that it did not provide notice to customers in Arizona because it
8 was without any customers for several years prior to making this application. Staff stated that it
9 believes that under these circumstances, ICG should not be required to provide its former customers
10 with notice of service cancellation pursuant to A.A.C. R14-2-1107.

11 8. ICG did not collect advances, deposits and/or prepayments from its customers in
12 Arizona. Its performance bond of \$125,000 is still valid.

13 9. Staff stated that the Consumer Services Section of the Utilities Division had no
14 consumer complaints, inquiries, and/or opinions against ICG from January 1, 2003 through May 19,
15 2006. ICG is a corporation in good standing with the Corporations Division of the Commission.

16 10. Staff further stated that there are numerous carriers in Arizona that offer similar
17 services as ICG. Staff stated its belief that approval of ICG's request to discontinue service is in the
18 public interest, and recommended approval of ICG's application and cancellation of ICG's tariffs on
19 file with the Commission.

20 11. Because Applicant was without any customers for several years prior to making this
21 application, the notice requirement of A.A.C. R14-2-1107(B) should therefore be waived under the
22 unique circumstances of this case. However, this waiver should not be considered precedent for other
23 providers who wish to discontinue service. Absent the unique facts presented in this case, we will
24 strictly enforce the requirements set forth in A.A.C. R14-2-1107.

25 CONCLUSIONS OF LAW

26 1. Applicant is a public service corporation within the meaning of Article XV of the
27 Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

28 2. The Commission has jurisdiction over Applicant and the subject matter of the

1 application.

2 3. Cancellation of the Applicant's CC&N is in the public interest.

3 4. Pursuant to A.R.S. § 40-282, the Commission may issue this Decision without a
4 hearing.

5 5. Staff's recommendation is reasonable and should be adopted.

6 **ORDER**

7 IT IS THEREFORE ORDERED that ICG Telecom Group, Inc.'s Application shall be, and
8 hereby is, approved.

9 IT IS FURTHER ORDERED that ICG Telecom Group, Inc.'s Certificate of Convenience and
10 Necessity shall be, and hereby is, cancelled.

11 IT IS FURTHER ORDERED that ICG Telecom Group, Inc.'s tariffs on file with the
12 Commission shall be, and hereby are, cancelled.

13 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

14 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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17 CHAIRMAN

COMMISSIONER

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19 COMMISSIONER

COMMISSIONER

COMMISSIONER

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IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
Director of the Arizona Corporation Commission, have
hereunto set my hand and caused the official seal of the
Commission to be affixed at the Capitol, in the City of Phoenix,
this ____ day of _____, 2006.

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BRIAN C. McNEIL
EXECUTIVE DIRECTOR

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27 DISSENT _____

28 DISSENT _____

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SERVICE LIST FOR:

ICG TELECOM GROUP, INC.

DOCKET NO.:

T-03566A-06-0320

Melissa C. Martin
HOLLAND & HART
P.O. Box 8749
Denver, CO 80201

Christopher Kempley, Chief Counsel
Legal Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

Ernest G. Johnson, Director
Utilities Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

COMMISSIONERS
JEFF HATCH-MILLER - Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES



BRIAN C. McNEIL
Executive Director

ARIZONA CORPORATION COMMISSION

DATE: November 17, 2005

DOCKET NO: T-04294A-04-0879

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Amy Bjelland. The recommendation has been filed in the form of an Order on:

INMATE CALLING SOLUTIONS, LLC
(CC&N/COPT)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00 p.m.** on or before:

NOVEMBER 28, 2005

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

DECEMBER 6 AND 7, 2005

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.


BRIAN C. McNEIL
EXECUTIVE DIRECTOR

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 JEFF HATCH-MILLER, Chairman
4 WILLIAM A. MUNDELL
5 MARC SPITZER
6 MIKE GLEASON
7 KRISTIN K. MAYES

8 IN THE MATTER OF THE APPLICATION OF
9 INMATE CALLING SOLUTIONS, LLC FOR A
10 CERTIFICATE OF CONVENIENCE AND
11 NECESSITY TO PROVIDE CUSTOMER-OWNED
12 PAY TELEPHONE SERVICE.

DOCKET NO. T-04294A-04-0879

DECISION NO. _____

13 **ORDER**

14 Open Meeting
15 December 6 and 7, 2005
16 Phoenix, Arizona

17 **BY THE COMMISSION:**

18 Having considered the entire record herein and being fully advised in the premises, the
19 Commission finds, concludes, and orders that:

20 **FINDINGS OF FACT**

21 1. On December 9, 2004, Inmate Calling Solutions, LLC ("Applicant") filed with the
22 Arizona Corporation Commission ("Commission") an application for a Certificate of Convenience
23 and Necessity ("Certificate") to provide customer-owned pay telephone ("COPT") service in the
24 State of Arizona.

25 2. On February 24, 2005, the Commission's Utilities Division Staff ("Staff") filed a letter
26 of insufficiency and first set of data requests to Applicant.

27 3. On July 25, 2005, Applicant filed responses to Staff's first set of data requests.

28 4. On September 26, 2005, Applicant amended its original application to provide service
in accordance with the rates, charges, terms and conditions contained within the Generic COPT
Tariff. The rate sheet submitted with the amendment indicated that Applicant's rates fall within the
rates allowed in the Generic COPT Tariff.

5. On October 5, 2005, Applicant filed additional information requested by Staff.

6. In Decision No. 55817 (December 10, 1987), the Commission found that COPT

1 providers were public service corporations subject to the jurisdiction of the Commission.

2 7. In Decision No. 57797 (April 8, 1992), the Commission adopted A.A.C. R14-2-901
3 through R14-2-909 to regulate COPT providers.

4 8. Decision No. 58535 (February 14, 1994) adopted a Generic Tariff that establishes
5 rates and minimum service standards applicable to COPT service.

6 9. Pursuant to A.R.S. § 40-282, the Commission may issue Decisions regarding COPT
7 Certificates without a hearing.

8 10. Applicant has requested that a Certificate be granted and has indicated that it will
9 provide COPT service pursuant to the rates, terms and conditions specified in the Generic COPT Tariff.

10 11. The Applicant requested a waiver of the posting and disclosure requirements.
11 Applicant's payphones will only be used in correctional facilities and calls placed by inmates are
12 limited to collect or prepaid only. For security reasons, placards are not allowed to be posted on
13 telecommunications equipment that is used by inmates. The Applicant stated that any correctional
14 facility that enters a contract for service will be required to provide information to inmate end users
15 and their families or called parties that informs all users of the dialing instructions and the identity,
16 rates, customer service number and the identity number of the company requesting the authority to
17 provide COPT service.

18 12. On October 17, 2005, Staff filed a Staff Report recommending approval of the
19 application and waivers requested by the Applicant. Staff stated that in the past, the Commission has
20 approved waivers of the posting and disclosure requirements subject to the condition that the
21 correctional facility provide information to inmate end users and their families or other called parties
22 that informs all users of the dialing instructions and the identity, rates, customer service number and
23 identity number of the company requesting the authority to provide COPT service. The Applicant
24 stated that any correctional facility with which it enters into a contract will be required to provide this
25 information. Staff therefore believes the Applicant has taken the necessary action to be exempt from
26 the requirement to provide calling instructions and rate information through the use of a placard
27 affixed to the telephone.

28 13. Staff stated that the Applicant provides prepaid calling cards to inmates, with the rates

1 and charges for these prepaid services shown on the reverse side of the prepaid calling cards.
2 Further, rate details are provided to the inmates at the point of purchase within the correctional
3 facility.

4 14. The Applicant stated that before any charges are assessed and upon request, rate
5 quotes will be made available to the caller and called party for collect calls at the time the call is
6 placed. Additionally, rate quotes are provided via an automated announcement during the call set-up
7 process and prior to call acceptance, and the called party may listen to the rates and choose to refuse
8 the call without incurring any charges.

9 15. Staff stated that the Applicant also requested the following waivers to the Generic
10 COPT Tariff because it is providing service in correctional facilities:

11 (a) At the request of the correctional facility, the Applicant will arrange to block
12 access to other carriers, 911, directory assistance and specified dialing sequences (1+800;
13 10XXX, 976-XXXX, etc.).

14 (b) At the request of the correctional facility, the Applicant will arrange to block
15 incoming calls.

16 (c) At the request or specifications of the correctional facility, the Applicant will
17 limit the availability of service to inmates.

18 (d) At the request of the correctional facility, the Applicant will limit service to
19 collect calling and correctional facility provided prepaid calling cards only.

20 16. Staff stated that the Applicant's requests for waivers of the Generic COPT Tariff as
21 stated in Finding of Fact No. 15 are consistent with waivers granted to other providers of COPT
22 services in correctional facilities and should be granted in this matter as well.

23 **CONCLUSIONS OF LAW**

24 1. Applicant is a public service corporation within the meaning of Article XV of the
25 Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

26 2. The Commission has jurisdiction over Applicant and the subject matter of the
27 application.

28 3. The provision of COPT service in Arizona by Applicant is in the public interest.

4. Applicant is a fit and proper entity to receive a Certificate for providing COPT service in Arizona.

5. Staff's recommendation is reasonable and should be adopted.

ORDER

IT IS THEREFORE ORDERED that the Application of Inmate Calling Solutions, LLC for a Certificate of Convenience and Necessity for authority to provide customer-owned pay telephone service in Arizona shall be, and is, hereby granted.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this ____ day of _____, 2005.

BRIAN C. McNEIL
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

AB:mj

1 SERVICE LIST FOR:

INMATE CALLING SOLUTIONS, LLC

2 DOCKET NO:

T-04294A-04-0879

3 Robin Norton
4 Technologies Management, Inc.
5 210 North Park Avenue
6 Winter Park, FL 32789

7 Christopher Kempley, Chief Counsel
8 Legal Division
9 ARIZONA CORPORATION COMMISSION
10 1200 West Washington Street
11 Phoenix, AZ 85007

12 Ernest G. Johnson, Director
13 Utilities Division
14 ARIZONA CORPORATION COMMISSION
15 1200 West Washington Street
16 Phoenix, AZ 85007
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COMMISSIONERS
JEFF HATCH-MILLER - Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES



BRIAN C. McNEIL
Executive Director

ARIZONA CORPORATION COMMISSION

DATE: June 6, 2006

DOCKET NO.: T-02585A-05-0710

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Amy Bjelland. The recommendation has been filed in the form of an Order on:

INTER-TEL NETSOLUTIONS, INC.

(CC&N/RESELLER)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00 p.m.** on or before:

JUNE 15, 2006

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

JUNE 27 AND 28, 2006

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

A handwritten signature in black ink, appearing to read "B. C. McNeil".
BRIAN C. McNEIL
EXECUTIVE DIRECTOR

1
2 **BEFORE THE ARIZONA CORPORATION COMMISSION**

3 COMMISSIONERS

4 JEFF HATCH-MILLER, Chairman
5 WILLIAM A. MUNDELL
6 MARC SPITZER
7 MIKE GLEASON
8 KRISTIN K. MAYES

9 IN THE MATTER OF THE APPLICATION OF
10 INTER-TEL NETSOLUTIONS, INC. FOR A
11 CERTIFICATE OF CONVENIENCE AND
12 NECESSITY TO PROVIDE RESOLD LOCAL
13 EXCHANGE TELECOMMUNICATIONS
14 SERVICES.

DOCKET NO. T-02585A-05-0710

DECISION NO. _____

ORDER

11 Open Meeting
12 June 27 and 28, 2006
13 Phoenix, Arizona

14 **BY THE COMMISSION:**

15 Having considered the entire record herein and being fully advised in the premises, the
16 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

FINDINGS OF FACT

17 1. On March 19, 1997, Decision No. 60107 authorized Inter-Tel NetSolutions, Inc.
18 ("Inter-Tel" or "Applicant") to provide resold long distance service in Arizona.

19 2. On October 7, 2005, Inter-Tel filed with the Commission an application for a
20 Certificate of Convenience and Necessity ("Certificate") to provide residence and business
21 competitive resold¹ local exchange telecommunications services within the State of Arizona.

22 3. On December 8, 2005 and March 30, 2006, Inter-Tel filed responses to Data Requests
23 in this docket.

24 4. On May 8, 2006, the Commission's Utilities Division ("Staff") filed a Staff Report
25 recommending approval of the application. The Staff Report addressed the overall fitness of Inter-
26 Tel to receive a Certificate and also addressed whether its services should be classified as competitive

27 _____
28 ¹ In Decision No. 58926 (December 22, 1994), the Commission found that resold telecommunications providers ("resellers") are public service corporations subject to the jurisdiction of the Commission.

1 and whether its initial rates are just and reasonable.

2 5. Regarding Applicant's technical capability to provide the requested services, Staff
3 stated that Inter-Tel currently is authorized to provide local exchange service in several states, and is
4 authorized to provide long distance services throughout the United States. Inter-Tel, Inc., the parent
5 company of Inter-Tel, was founded in 1969 and has over 2,000 full-time employees offering voice
6 and data communications solutions systems, voice mail systems, and networking applications for
7 customers in North America, Europe, Australia, South Africa, and Asia. The parent company is
8 headquartered in Tempe, Arizona; Inter-Tel is headquartered in Phoenix, Arizona. Staff stated its
9 belief that Inter-Tel has the technical capability to provide the services it has requested the authority
10 to provide.

11 6. Regarding Applicant's financial capability to provide the requested services, Staff
12 stated that Applicant provided unaudited financial statements for the nine months ending September
13 30, 2005, which list assets of \$9,657,715, equity of \$4,130,254, and net income of \$3,977,035. Inter-
14 Tel indicated in its proposed local exchange service tariff that it will not collect advances, deposits,
15 and/or prepayment from its customers. However, Staff stated that since the Applicant is requesting a
16 Certificate for only resold local exchange service and advances and deposits will not be collected, a
17 limited bond is appropriate. Staff recommends that Inter-Tel be required to procure a performance
18 bond in the amount of \$25,000, with increases of the minimum bond amount if at any time it would
19 be insufficient to cover advances, deposits, and/or prepayments collected from the Applicant's
20 customers. Staff recommended that the bond amount should be increased in increments of \$12,500
21 when the total amount of advances, deposits, and/or prepayments is within \$2,500 of the bond
22 amount. If Inter-Tel desires to cancel service, it must file an application with the Commission
23 pursuant to A.A.C. R14-2-1107. Staff further recommended that at least 60 days prior to filing an
24 application to discontinue service, Inter-Tel be required to notify each of its customer and the
25 Commission of its intent to file such an application. Staff stated that failure to meet this requirement
26 should result in forfeiture of Inter-Tel's performance bond. Staff recommended that proof of the
27 performance bond be docketed within 365 days of the effective date of this Decision or 30 days prior
28 to the provision of services, whichever comes first, and must remain in effect until further order of

1 the Commission.

2 7. Inter-Tel seeks to provide service in areas where both an incumbent local exchange
3 carrier ("ILEC") and various competitive local exchange carriers ("CLECs") already provide
4 telecommunications service. Staff stated that Applicant would exert no market power and that the
5 reasonableness of its rates will be evaluated in a market with numerous competitors. Staff believes
6 that the rates in Applicant's proposed tariffs for its competitive services will be just and reasonable
7 and recommends that the Commission approve them.

8 8. Generally, rates for competitive services are not set according to rate of return
9 regulation. Regarding establishing rates and charges, Staff has determined that Applicant's initial fair
10 value rate base ("FVRB") will be zero at the end of the first 12 months of operation². Staff has
11 reviewed the rates to be charged by the Applicant and believes they are just and reasonable, as they
12 are comparable to the rates of other CLECs and ILECs offering service in Arizona and to the rates
13 Inter-Tel charges in other jurisdictions. Therefore, while Staff considered the FVRB information
14 submitted by the Applicant, that information should not be given substantial weight in this analysis.

15 9. Commission rules provide pricing flexibility by allowing competitive
16 telecommunication service companies to price their services at or below the maximum rates
17 contained in their tariffs as long as the pricing of those services complies with A.A.C. R14-2-1109.
18 This requires the Applicant to file a tariff for each competitive service that states the maximum rate
19 as well as the effective (actual) price that will be charged for the service. Any changes to the
20 Applicant's effective (actual) price for a service must comply with A.A.C. R14-2-1109, which
21 provides that the minimum rates for the applicant's competitive services must not be below the
22 Applicant's total service long run incremental costs of providing the services. The Applicant's
23 maximum rates should be the maximum rates proposed by the Applicant in its most recent tariffs on
24 file with the Commission. Future changes to the maximum rates must comply with A.A.C. R14-2-
25 1110.

26
27
28 ² Applicant's current assets include nearly \$100,000 of personal property in Arizona; these are not directly involved in the delivery of telecommunications services.

1 **Local Exchange Carrier Specific Issues**

2 10. Number portability is essential to local exchange competition, as competition may not
3 be vigorous if customers, especially business customers, must change their telephone numbers to take
4 advantage of a competitive local exchange carrier's service offerings. Consistent with federal laws,
5 federal rules and A.A.C. R14-2-1308(A), Inter-Tel must make number portability available to
6 facilitate the ability of a customer to switch between authorized local carriers within a given wire
7 center without changing the customer's telephone number and without impairment to quality,
8 functionality, reliability or convenience of use.

9 11. Commission rules require that all telecommunications service providers that
10 interconnect into the public switched network shall provide funding for the Arizona Universal
11 Service Fund ("AUSF"). Inter-Tel must make monthly payments into the AUSF pursuant to A.A.C.
12 R14-2-1204(B).

13 12. Staff recommended that Inter-Tel be required to abide by the quality of service
14 standards that were approved by the Commission for Qwest (f/k/a US West) in Decision No. 59421
15 (December 20, 1995), Docket No. T-01051B-93-0183; however, because penalties imposed in that
16 docket were due to Qwest's unsatisfactory level of service and Inter-Tel does not have a similar
17 history of service quality problems, Staff does not recommend that those penalties apply in the instant
18 docket. In the competitive market the applicant wishes to enter, the Applicant will generally have no
19 market power and will be forced to provide a satisfactory level of service or risk losing its customers.
20 Therefore, Staff believes it is unnecessary to subject Inter-Tel to those penalties at this time.

21 13. Staff expects that there may be areas where Inter-Tel installs the only local exchange
22 service facilities. In the interest of competition, Staff recommended that Inter-Tel be prohibited from
23 barring access to alternative local exchange service providers who wish to serve such areas. Access
24 to alternate providers should be provided pursuant to the 1996 Telecommunications Act, the rules
25 promulgated thereunder and Commission rules regarding interconnection and unbundling.

26 14. Inter-Tel has certified that in accordance with A.A.C. R14-2-1201(6)(d) and Federal
27 Communications Commission 47 CFR §§ 64.3001 and 64.3002 it will provide all customers with 911
28 and E911 service where available, or will coordinate with ILECs and emergency service providers to

1 provide 911 and E911 service.

2 15. Inter-Tel may, consistent with past Commission decisions, offer Caller ID provided
3 that per call and line blocking, with the capability to toggle between blocking and unblocking the
4 transmission of the telephone number, are provided as options to which customers could subscribe
5 with no charge. Inter-Tel must offer Last Call Return service that will not return calls to telephone
6 numbers that have the privacy indicator activated, indicating that the number has been blocked.

7 **Complaint Information**

8 16. Staff stated that the Commission's Consumer Services and Compliance sections have
9 found Inter-Tel to be in good standing and compliance, respectively. Inter-Tel is authorized to
10 provide local exchange service in Colorado, Georgia, Illinois, Missouri, New Jersey, New York and
11 Texas. Inter-Tel certified that none of its officers, directors or partners has been involved in any civil
12 or criminal investigations, formal or informal complaints; and also stated that none of its officers,
13 directors or partners has been convicted of any criminal acts in the past ten years.

14 **Competitive Services Analysis**

15 17. Inter-Tel seeks to enter a local exchange market with a number of CLECs already
16 authorized to provide service; however, ILECs hold a dominant position in the local exchange service
17 market. At locations where ILECs provide local exchange service, Inter-Tel will enter the market as
18 an alternative provider of local exchange service. Applicant will have to compete with those
19 companies in order to obtain customers.

20 18. Qwest and other ILECs are the primary providers of local exchange service in Arizona
21 and have a large share of the market. Several CLECs and local exchange resellers also provide local
22 exchange service and generally have a limited market share. Cox Telecom is the only CLEC
23 believed to have captured significant market share in the Phoenix and Tucson metropolitan areas.
24 Inter-Tel will not have the capability to adversely affect prices or restrict output to the detriment of
25 telephone service subscribers.

26 19. Inter-Tel is not affiliated with any alternative providers of local exchange service.

27 20. Both ILECs and CLECs have the ability to make functionally equivalent or substitute
28 services readily available at competitive rates, terms and conditions as Inter-Tel.

Staff's Recommendations

21. Staff recommended that Applicant's application for a Certificate to provide competitive resold local exchange telecommunications services be granted subject to the following conditions:

- (a) That the Applicant complies with all Commission Rules, Orders and other requirements relevant to the provision of intrastate telecommunications services.
- (b) That the Applicant abides by the quality of service standards that the Commission approved for Qwest in Docket No. T-01051B-93-0183.
- (c) That the Applicant be prohibited from barring access to alternative local exchange service providers who wish to serve areas where the Applicant is the only provider of local exchange service facilities.
- (d) That the Applicant be required to notify the Commission immediately upon changes to the Applicant's name, address or telephone number.
- (e) That the Applicant cooperates with Commission investigations including, but not limited to, customer complaints.
- (f) That the rates proposed by this filing are for competitive services. In general, rates for competitive services are not set according to rate of return regulation. Staff obtained information from the company and has determined that its fair value rate base is zero.
- (g) That, if at some future date, the Applicant wants to collect advances, deposits and/or prepayments from its resold local service customers, the Applicant be required to file an application with the Commission for Commission approval. Such application must reference the decision in this docket and explain the Applicant's plans for procuring its increased performance bond.
- (h) That the Applicant offers Caller ID with the capability to toggle between blocking and unblocking the transmission of the telephone number at no charge.
- (i) That the Applicant offers Last Call Return service that will not return calls to telephone numbers that have the privacy indicator activated.
- (j) That the Commission authorize the Applicant to discount its rates and service charges to the marginal cost of providing the services.

22. Staff further recommended that Applicant's resold local exchange Certificate should be conditioned upon the following:

- (a) Applicant shall file a conforming tariff for each service within its CC&N within 365 days from the date of an Order in this matter, or 30 days prior to providing service, whichever comes first. The tariffs submitted must conform with the application and state that the Applicant does not collect advances,

deposits and/or prepayments from its customers.

(b) Applicant shall provide proof of procuring a performance bond as described below, and file proof of that performance bond within 365 days from the date of an Order in this matter, or 30 days prior to providing service, whichever comes first. The performance bond must remain in effect until further order of the Commission.

(c) Applicant shall procure a performance bond in the initial amount of \$25,000, with the minimum bond amount of \$25,000 to be increased if at any time it would be insufficient to cover all advances, deposits, prepayments collected from its customers, in the following manner: The bond amount should be increased in increments of \$12,500, with such increases to occur whenever the total amount of the advances, deposits or prepayments reaches a level within \$2,500 under the actual bond amount.

23. Staff recommended that if the Applicant fails to meet the timeframes outlined in Finding of Fact No. 24 above, then Applicant's resold local exchange Certificate should become null and void after due process.

24. The rates proposed by these filings are for competitive services.

25. Staff's recommendations as set forth herein are reasonable.

CONCLUSIONS OF LAW

1. Applicant is a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

2. The Commission has jurisdiction over Applicant and the subject matter of the application.

3. Notice of the application was given in accordance with the law.

4. Applicant's provision of resold local exchange telecommunications services is in the public interest.

5. Applicant is a fit and proper entity to receive the Certificate as conditioned herein for providing competitive resold local exchange services in Arizona.

6. Staff's recommendations are reasonable and should be adopted.

ORDER

IT IS THEREFORE ORDERED that the application of Inter-Tel NetSolutions, Inc. for a Certificate of Convenience and Necessity for authority to provide competitive resold local exchange

services is hereby granted conditioned upon its compliance with the conditions recommended by Staff as set forth above.

IT IS FURTHER ORDERED that if Inter-Tel NetSolutions, Inc. fails to meet the timeframes outlined in Finding of Fact No. 22, above, then the resold local exchange Certificate of Convenience and Necessity conditionally granted herein shall become null and void.

IT IS FURTHER ORDERED that Staff's recommendations set forth in Finding of Fact No. 21 above are hereby adopted.

IT IS FURTHER ORDERED that Inter-Tel NetSolutions, Inc. shall comply with the adopted Staff recommendations as set forth in Finding of Fact No. 21 above.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this ____ day of _____, 2005.

BRIAN C. McNEIL
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

AB:mj

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SERVICE LIST FOR: INTER-TEL NETSOLUTIONS, INC.

DOCKET NO.: T-02585A-05-0710

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COMMISSIONERS
JEFF HATCH-MILLER - Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES



BRIAN C. McNEIL
Executive Director

ARIZONA CORPORATION COMMISSION

DATE: September 9, 2005
DOCKET NO: WS-02987A-05-0088
TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Amy Bjelland. The recommendation has been filed in the form of an Opinion and Order on:

**JOHNSON UTILITIES COMPANY
(CC&N EXTENSION)**

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00 p.m.** on or before:

SEPTEMBER 19, 2005

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

SEPTEMBER 27 AND 28, 2005

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.


BRIAN C. McNEIL
EXECUTIVE DIRECTOR

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 JEFF HATCH-MILLER Chairman
4 WILLIAM A. MUNDELL
5 MARC SPITZER
6 MIKE GLEASON
7 KRISTIN K. MAYES

8 IN THE MATTER OF THE APPLICATION OF
JOHNSON UTILITIES COMPANY FOR AN
EXTENSION OF ITS CERTIFICATE OF
CONVENIENCE AND NECESSITY FOR
WASTEWATER SERVICE.

DOCKET NO. WS-02987A-05-0088

DECISION NO. _____

OPINION AND ORDER

9 DATE OF HEARING: August 1, 2005

10 PLACE OF HEARING: Phoenix, Arizona

11 ADMINISTRATIVE LAW JUDGE: Dwight D. Nodes¹

12 APPEARANCES: Mr. Richard Sallquist, SALLQUIST,
13 DRUMMOND & O'CONNOR, on behalf of
Applicant;

14 Mr. David Ronald, Staff Attorney, Legal
15 Division, on behalf of the Utilities Division of
the Arizona Corporation Commission; and

16 Mr. Patrick J. Black, FENNEMORE CRAIG, on
17 behalf of Standard Pacific of Arizona, Inc.

18 **BY THE COMMISSION:**

19 On February 11, 2005, Johnson Utilities, LLC, dba Johnson Utilities Company ("Johnson
20 Utilities" or "Company") filed with the Arizona Corporation Commission ("Commission") an
21 application for an extension of its Certificate of Convenience and Necessity ("CC&N") to provide
22 water and wastewater service.

23 On March 10, 2005, the Commission's Utilities Division ("Staff") issued a letter of
24 insufficiency which stated that the application had not met the sufficiency requirements of A.A.C.
25 R14-2-402(C).

26 On April 7, 2005, Staff filed a letter of sufficiency.

27 _____
28 ¹ Dwight Nodes conducted the hearing in this proceeding and Administrative Law Judge Amy Bjelland drafted the
Recommended Opinion and Order.

1 On April 12, 2005, by Procedural Order, this matter was set for hearing on July 13, 2005, and
2 Johnson was ordered to notify all property owners in the affected area of the application and hearing
3 date.

4 On May 12, 2005, Notice of Withdrawal of Counsel for the Company was filed.

5 On June 1, 2005, Diversified Water Utilities, Inc. ("Diversified") filed an Application to
6 Intervene.

7 On June 2, 2005, the Company filed an Affidavit of Publication as set forth in the April 12,
8 2005 Procedural Order.

9 On June 3, 2005, by Procedural Order, counsel for the Company was ordered to comply with
10 A.A.C. R14-3-104(e) regarding the rules for Withdrawal of Counsel.

11 On June 6, 2005, Staff filed its Staff Report in this matter recommending that the Commission
12 issue an Order Preliminary.

13 On June 8, 2005, counsel for the Company filed an Application of Withdrawal as Counsel
14 pursuant to the June 3, 2005 Procedural Order.

15 On June 13, 2005, an Application for Substitution as Counsel was filed for the Company.

16 On June 17, 2005, Standard Pacific of Arizona, Inc. ("Standard Pacific") filed an Application
17 for Leave to Intervene.

18 On June 20, 2005, Diversified filed a Request for Additional Time to File Comments to the
19 Staff Report.

20 On June 20, 2005, the Company filed Objections to the Staff Report.

21 On June 21, 2005, by Procedural Order, the firm of Fennemore Craig was granted its request
22 to withdraw as counsel for the Company and Diversified was granted intervention.

23 On June 23, 2005, Staff filed a response to Diversified's request for additional time to file
24 comments to the Staff Report stating it had no objection and requesting that the hearing date be
25 moved to a later date.

26 On June 30, 2005, Johnson and Diversified filed a joint settlement statement.

27 On July 7, 2005, by Procedural Order, the evidentiary portion of the hearing was rescheduled
28 to August 1, 2005 and Standard Pacific was granted intervention.

1 On July 27, 2005, Staff filed an Amendment to its Staff Report.

2 On August 1, 2005, a hearing was convened before a duly authorized Administrative Law
3 Judge of the Commission at its offices in Phoenix, Arizona. Johnson Utilities and Staff entered
4 appearances through counsel. At the conclusion of the hearing, the matter was taken under
5 advisement pending issuance of a Recommended Opinion and Order.

6 * * * * *

7 Having considered the entire record herein and being fully advised in the premises, the
8 Commission finds, concludes, and orders that:

9 **FINDINGS OF FACT**

10 **Background of Application**

11 1. Johnson Utilities is a public service corporation that provides water and wastewater
12 service in Pinal County, Arizona pursuant to an original CC&N granted in Decision No. 60223 (May
13 27, 1997). Subsequent CC&N extensions for water and/or wastewater service were granted to
14 Johnson Utilities in a number of other dockets.

15 2. On February 11, 2005, Johnson Utilities filed an application seeking to extend its
16 CC&N to provide water and wastewater service to an area adjacent to the CC&N area based on a
17 request for service from Standard Pacific of Arizona, Inc. (Ex. A-1).

18 3. The requested extension area includes approximately 100 acres in an area that is
19 contiguous to Johnson Utilities' current wastewater CC&N on its northern and western borders and is
20 designed to contain approximately 351 residential lots (Ex. A-2). The proposed extension area, a
21 development known as Quail Run, is located in Pinal County and covers a portion of Section 24,
22 Township 3 South, Range 8 East, and is more fully described in Attachment A, attached hereto (Ex.
23 A-3).

24 4. By Procedural Order issued April 12, 2005, this matter was scheduled for hearing on
25 July 13, 2005 and Johnson Utilities was ordered to publish notice of the hearing and notify all
26 property owners in the affected area of the application and the hearing date.²

27 ² By Procedural Order issued July 7, 2005, the evidentiary hearing was rescheduled to August 1, 2005, due to a
28 scheduling conflict. However, the July 13, 2005 hearing date was retained in order to protect the published notice. No
public comment witnesses appeared at the July 13, 2005 hearing.

1 5. On June 2, 2005, the Company filed a Notice of Compliance with the Customer
2 Notice and Publication requirements set forth in the April 12, 2005 Procedural Order (Ex. A-4).

3 6. On June 1, 2005, Diversified filed an Application to Intervene. On June 17, 2005,
4 Standard Pacific filed an Application for Leave to Intervene. On June 21, 2005, by Procedural Order,
5 Diversified was granted intervention. On July 7, 2005, by Procedural Order, Standard Pacific was
6 granted intervention.

7 7. On June 6, 2005, Staff filed its Staff Report, concluding, among other things, that
8 Johnson Utilities did not have adequate production and storage capacity to serve both the existing and
9 proposed CC&N areas (Ex. S-1). Staff recommended that, should the Commission grant the
10 requested extension to the Company, the Commission issue an Order Preliminary to issuance of the
11 ultimate CC&N Extension pursuant to A.R.S. §40-282(D) (*Id.*).

12 8. On June 30, 2005, Johnson Utilities and Diversified filed a "Joint Settlement
13 Statement" that describes a resolution of an ongoing dispute between those parties with respect to
14 which company is best suited to serve the area of Pinal County described in their Settlement. The
15 Settlement generally provides that Diversified will serve the area north of Bella Vista Road between
16 the Union Pacific Railroad and the Central Arizona Project Canal. Johnson Utilities would provide
17 water service south of Bella Vista Road. Both parties agree that they will not seek to extend their
18 certificates or operations within the other company's "planning area." Diversified and Johnson
19 Utilities filed their "Joint Settlement Statement" in this docket. The Settlement represents an
20 agreement between two regulated public service corporations that we will consider as part of our
21 deliberations in this proceeding. The Settlement is not binding on us, but is one consideration that
22 will assist us in our deliberation of future matters involving these companies or the property they
23 have delineated as their "planning areas." Although we appreciate the efforts of the companies to
24 settle their long-standing differences, we decline to approve the agreement between Diversified and
25 Johnson. We wish to make clear that each application for a CC&N extension will be considered
26 based on its individual merits and the public interest, and not solely on the agreement of companies
27 that have decided to carve out specific future service territories.

28 9. On July 27, 2005, Staff filed an amendment to the Staff Report, stating that Johnson

1 Utilities provided new information regarding new wells recently placed in service and adjustments to
2 flows to existing wells brought about by pump replacements and blending (Ex. S-2). Staff
3 particularly noted that the San Tan Heights Well No. 2 received an Approval of Construction from
4 the Arizona Department of Environmental Quality ("ADEQ") on April 18, 2005, for 700 gallons per
5 minute (*Id.*). In addition, the Morning Sun Farm Well No. 1 received an Approval of Construction on
6 June 3, 2005, for 1,100 gallons per minute (*Id.*). Based on the new information and the demand
7 requirements used in calculations in the original Staff Report, Staff indicates that there will be
8 enough well capacity to provide for an annual peak day demand of 521 gallons per day of service
9 through December 2005 and an average daily demand during the peak month of 417 gallons per day
10 of service through June 2006 (*Id.*). Additionally, Johnson Utilities currently has applications pending
11 with ADEQ for the Crestfield Wells Nos. 1 and 2, each of which is expected to produce 1,000 gallons
12 per minute (*Id.*). Therefore Staff concludes that the existing system has adequate production and
13 storage capacity (*Id.*).

14 10. A public hearing on the application was held as scheduled on August 1, 2005. At
15 hearing, Staff introduced, and the Administrative Law Judge admitted into evidence, without
16 objection, Staff's Revised Recommendations (Ex. S-3).

17 **Wastewater System**

18 11. Quail Run will have an eight-inch gravity sewer throughout the development that will
19 be pumped by lift station and force main to the existing Sonoran Villages development lift station
20 (Ex. S-1).

21 12. Pursuant to Section 208 of the Federal Water Pollution Control Act, each state is
22 required to develop and implement area-wide water quality management plans for pollution control
23 purposes. The Central Arizona Association of Governments ("CAAG") has been designated as the
24 area-wide water quality management planning agency for Pinal County. The extension area sought in
25 this proceeding is within the CAAG §208 planning area for Johnson Utilities, for service provided by
26 Copper Basin, and therefore conforms to the area-wide wastewater plans (Ex. S-1). The Copper
27 Basin regional facility is a master planned wastewater treatment project for which Johnson Utilities
28 has obtained CAAG §208 Water Quality Plan approval. Copper Basin encompasses the Sonoran

1 Villages development and is matched to projected development and population densities.

2 13. Staff indicates that the proposed wastewater system has, or can reasonably be expected
3 to develop, the necessary sewage treatment capacity to serve the proposed CC&N extension area for
4 Quail Run and is consistent with the approved CAAG §208 Water Quality Plan for Johnson Utilities
5 (Ex. S-1).

6 **Water System**

7 14. Staff states that Quail Run will be served by the Johnson Utilities public water system
8 number 11-128. Based on historical growth rates, Staff anticipates that the existing service area
9 could have 22,000 total customers at the end of five years. Johnson Utilities projects an additional
10 351 customers for the proposed CC&N extension at the end of five years. The initial Staff Report
11 states that the existing production and storage adequately serve approximately 8,235 connections
12 under peak conditions. Thus, Staff initially concluded that Johnson Utilities did not currently have
13 enough capacity to adequately serve its existing customers during peak periods (Ex. S-1).

14 15. Subsequent to issuance of the initial Staff Report on June 6, 2005, Johnson Utilities
15 provided additional information to Staff regarding the well capacity issue. Based on this additional
16 information, Staff states in its Amendment to Staff Report filed on July 27, 2005, that there are new
17 wells that have recently been placed in service as well as adjustments to flows to existing wells
18 brought about by pump replacements and blending (Ex. S-2). Johnson Utilities received an Approval
19 of Construction from ADEQ on April 18, 2005 for the San Tan Heights Well No. 2 for 700 gallons
20 per minute. The Morning Sun Farm Well No. 1 received an Approval of Construction on June 3,
21 2005, for 1,100 gallons per minute.

22 16. Staff states that based upon the demand requirements discussed in the June 6, 2005
23 Staff Report, the updated customer count provided by Johnson Utilities of 10,833 customers at the
24 end of May 2005, and assuming an average growth rate of 500 customers per month, there will be
25 enough well capacity for an annual peak day demand of 521 gallons per day service through
26 December 2005 and an average daily demand during the peak month of 417 gallons per day service
27 through June 2006 (Ex. S-2).

28 17. Staff additionally notes that Johnson Utilities has submitted copies of applications for

1 the Crestfield Wells Nos. 1 and 2, which Johnson Utilities submitted to ADEQ on May 26, 2005.
2 Each well is expected to produce 1,000 gallons per minute. Taken together, this information leads
3 Staff to conclude that the existing system has adequate production and storage capacity (Ex. S-2).

4 **La Osa and Sonoran Litigation**

5 18. Staff notes that the Arizona Attorney General's Office filed a civil lawsuit against the
6 principal owner of Johnson Utilities, George Johnson, and against various affiliates of Johnson
7 Utilities, on February 14, 2005³. The allegations against Mr. Johnson and the Johnson Utilities
8 affiliates include trespass, breach of a grazing lease, destruction of native plants on state and private
9 land, water quality discharge violations, and unlawful killing of bighorn sheep. Staff states that the
10 litigation is focused primarily on Mr. Johnson's actions as the owner of La Osa Ranch, a 10,000 acre
11 property in southern Pinal County, which is adjacent to state trust land and the Ironwood National
12 Forest Monument. Johnson Utilities is not named in the lawsuit.

13 19. Sonoran Utility Services, LLC, which was previously owned by Mr. Johnson or
14 Johnson affiliates, is also named as a defendant in a civil lawsuit filed by Lennar Communities
15 Development, Inc. related to the formation and operation of the 387 Water Improvement District and
16 the 387 Wastewater Improvement District⁴. Although Mr. Johnson was named personally as a
17 defendant in the Sonoran litigation, Johnson Utilities Company is not a party in the lawsuit.

18 20. Johnson Utilities' executive vice-president, Brian Tompsett, testified regarding the La
19 Osa litigation that the defendant, Johnson et al, in the case filed motions to dismiss on a number of
20 the causes alleged by the Attorney General's Office. (Tr. at 35) At the time of the hearing, the
21 Superior Court had taken these matters under advisement. The Commission takes administrative
22 notice of the Ruling filed in Maricopa County Superior Court on August 26, 2005, wherein the Court
23 denied the Johnson Defendants' Motions to Dismiss Counts Seven and Eight of the Complaint.
24 Counts Seven and Eight relate to liability for the death of a number of bighorn sheep alleged in the La
25 Osa litigation.

26 21. Both the La Osa and Sonoran litigation are ongoing at this time.

27
28 ³ Maricopa County Superior Court Case No. CV2005-002692 ("La Osa Litigation").

⁴ Maricopa County Superior Court Case No. CV2005-002548 ("Sonoran litigation").

1 **Staff Recommendations**

2 22. The Staff Report, filed on June 6, 2005, was based on incomplete information as
3 discussed above. It set forth a number of requirements to be satisfied as a condition of extending
4 Johnson Utilities' CC&N as requested in this docket (Ex. S-1). Staff requested that the Commission
5 issue, pursuant to A.R.S. §40-282(D), an "Order Preliminary" to the issuance of the ultimate CC&N
6 extension to Johnson Utilities (*Id.*). Due to Staff's Amended Staff Report, wherein Staff agreed that
7 Johnson Utilities has sufficient production capacity (Ex. S-2), there is no longer a need to address the
8 issue of whether an "Order Preliminary" is necessary in this proceeding.

9 23. At hearing, the Administrative Law Judge admitted into evidence Staff's revised
10 recommendations for this docket (Ex. S-3). Staff's revised recommendations no longer include the
11 need for an "Order Preliminary." Staff recommends approval of the Application (Tr. at 81), with
12 requirements as follows, that Johnson Utilities:

- 13 (a) Be required to update or amend its Designation of Assured Water
14 supply to include the service area in this CC&N extension application. Johnson Utilities shall file with Docket Control under this same docket
15 number the amended Designation of Assured Water Supply, stating
16 that there is adequate water supply, where applicable or when required
17 by statute within 365 days of the Decision in this case.
- 18 (b) File with Docket Control, for Staff review and/or approval, a copy of
19 the fully executed main extension agreements for wastewater and
20 water facilities for Quail Run within 365 days of the Decision in this
21 case.
- 22 (c) File with Docket Control the Unified (Aquifer Protection) Water
23 Quality Permits issued by ADEQ for the Copper Basin Regional
24 Wastewater Treatment Facility within 365 days of the Decision in this
25 case.
- 26 (d) Be required to charge its authorized rates and charges for water and
27 wastewater in the extension area.
- 28 (e) Submit a full rate case filing for both the water and wastewater
divisions using a 2005 test year no later than April 30, 2006. As an
alternative, it is recommended that the Commission order Staff to
perform an audit of the Johnson Utilities Hook-up Fee Account within
three months of a Decision in this matter and provide the Commission
with appropriate recommendations.

1 (f) Be required to file a quarterly report with the Compliance Section
2 regarding the status of the pending La Osa Litigation.

3 (g) Be required to file Affiliate Interest reports pursuant to A.A.C. R14-2-
4 801 et al.

5 24. Staff further recommends that the Commission's Decision granting the requested
6 CC&N extension to Johnson Utilities be considered null and void without further order from the
7 Commission should Johnson Utilities fail to met Conditions (a), (b) and (c) above within the time
8 specified (Ex. S-3).

9 **Conclusion**

10 25. Staff's original recommendation that the Commission issue an "Order Preliminary" is
11 no longer necessary in light of the subsequent information presented by Staff and Johnson Utilities
12 with respect to available production capacity.

13 26. Staff's recommendation for approval of the application is reasonable and shall be
14 adopted, subject to compliance with the conditions discussed herein. In addition, we will require that
15 the reporting requirements and conditions described above for the La Osa litigation shall also be
16 required with respect to the Sonoran litigation.

17 27. In a prior water and wastewater CC&N extension proceeding involving Palo Verde
18 Utilities Company, LLC, and Santa Cruz Water Company, LLC, we required each company to
19 procure a \$500,000 performance bond due to a substantial judgment that had been entered by a court
20 in Oregon against the president of both companies⁵. The performance bond requirements were
21 imposed as a measure of protection for the companies' customers due to the possibility that the
22 utilities could be affected by the judgment, because of those companies' limited operating experience,
23 and because of rapidly expanding service areas. Although Johnson Utilities Company insists that its
24 operations are well insulated from any judgment that may be entered against Mr. Johnson and the
25 other non-utility affiliates named in the lawsuits, we believe it is prudent at this time to require
26 Johnson Utilities to procure a \$1 million performance bond as a means of protection against any

27 ⁵ Decision No. 66394 (October 6, 2003), at 11-12. The performance bond requirements for Palo Verde and Santa Cruz
28 were increased to \$750,000 per company in a subsequent CC&N extension proceeding. Decision No. 67240 (September
23, 2004), at 15.

1 potential detrimental impact on customers that may occur as a result of a judgment against Mr.
2 Johnson and/or Johnson Utilities affiliates. Proof of the performance bond shall be filed in this
3 docket prior to service being provided to any customers in the CC&N extension area. The bonds
4 shall remain in place until further Order of the Commission.

5 28. Given the rapid expansion of Johnson Utilities' service area in the past several years
6 and the fact that the Company has not filed a rate case since its rates were initially established in
7 1997, we agree with Staff that Johnson Utilities should be required to file a rate application for both
8 water and wastewater in order to allow Staff to perform a full audit of the Company's operations and
9 to ensure that the established rates are reasonable based on all plant, revenues and expenses.
10 However, we will amend Staff's proposed filing date and require Johnson Utilities to file, by no later
11 than June 1, 2006, a rate application based on a 2005 test year.

12 CONCLUSIONS OF LAW

13 1. Johnson Utilities is a public service corporation within the meaning of Article XV of
14 the Arizona Constitution and A.R.S. §40-281 *et seq.*

15 2. The Commission has jurisdiction over Johnson Utilities and the subject matter of the
16 application.

17 3. Notice of the application was provided in accordance with law.

18 4. There is a public need and necessity for water and wastewater utility service in the
19 proposed extension area.

20 5. Johnson Utilities is a fit and proper entity to receive an extension of its wastewater
21 CC&N to include the service area more fully described in Exhibit A attached hereto, subject to
22 compliance with the conditions set forth above.

23 ORDER

24 IT IS THEREFORE ORDERED that the application of Johnson Utilities Company for an
25 extension of the service area under its Certificate of Convenience and Necessity to include the area
26 described in Exhibit A attached hereto and incorporated herein by reference be, and is hereby
27 approved, subject to the conditions more fully described herein.

28 IT IS FURTHER ORDERED that Johnson Utilities Company is required to update or amend

1 its Designation of Assured Water supply to include the service area in this CC&N extension
2 application. Johnson Utilities Company shall file with Docket Control under this same docket
3 number the amended Designation of Assured Water Supply, stating that there is adequate water
4 supply, where applicable or when required by statute within 365 days of the decision in this case.

5 IT IS FURTHER ORDERED that Johnson Utilities Company must file with Docket Control,
6 for Staff review, a copy of the fully executed main extension agreements for wastewater and water
7 facilities for Quail Run within 365 days of the decision in this case.

8 IT IS FURTHER ORDERED that Johnson Utilities Company must file with Docket Control
9 the Unified (Aquifer Protection) Water Quality Permits issued by ADEQ for the Copper Basin
10 Regional Wastewater Treatment Facility within 365 days of the decision in this case.

11 IT IS FURTHER ORDERED that Johnson Utilities Company is required to charge its
12 authorized rates and charges for water and wastewater in the extension area.

13 IT IS FURTHER ORDERED that Johnson Utilities Company is required to file a quarterly
14 report with the Compliance Section regarding the status of the pending La Osa and Sonoran
15 Litigation.

16 IT IS FURTHER ORDERED that Johnson Utilities Company is required to file Affiliate
17 Interest reports pursuant to A.A.C. R14-2-801 et al.

18 IT IS FURTHER ORDERED that in the event Johnson Utilities Company fails to comply
19 with the above-stated conditions within the times specified, the CC&N extension approved herein
20 shall be deemed null and void without further Order of the Commission.

21 IT IS FURTHER ORDERED that Johnson Utilities Company shall procure a \$1 million
22 performance bond, with proof of such performance bond filed in Docket Control prior to retail
23 service being provided to any customers in the CC&N extension area. The performance bond shall
24 remain in place until further Order of the Commission and maintenance of the required bond shall be
25 evidenced by a quarterly filing (by January 15, April 15, July 15, and October 15) of a letter of bond
26 confirmation.

27 ...

28 ...

IT IS FURTHER ORDERED that Johnson Utilities Company must submit a full rate case filing for both the water and wastewater divisions using a 2005 test year no later than June 1, 2006.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this ____ day of _____, 2005.

BRIAN C. McNEIL
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

AB:mj

1 SERVICE LIST FOR:

JOHNSON UTILITIES COMPANY

2 DOCKET NO.:

WS-02987A-05-0088

3
4 Richard Sallquist
SALLQUIST & DRUMMOND
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5 Tempe, AZ 85282
Attorneys for Johnson Utilities Company

6
7 William P. Sullivan
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12 Attorneys for Standard Pacific of Arizona, Inc.

13 Christopher Kempley, Chief Counsel
Legal Division
14 ARIZONA CORPORATION COMMISSION
1200 West Washington Street
15 Phoenix, Arizona 85007

16 Ernest G. Johnson, Director
Utilities Division
17 ARIZONA CORPORATION COMMISSION
1200 West Washington Street
18 Phoenix, Arizona 85007

EXHIBIT "A"

A PARCEL OF LAND BEING SITUATE IN THE WEST HALF OF THE WEST HALF OF SECTION 24, TOWNSHIP 3 SOUTH, RANGE 8 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, PINAL COUNTY, ARIZONA, HAVING A BOUNDARY MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING FOR A TIE AT THE ARIZONA HIGHWAY DEPARTMENT BRASS CAP MARKING THE NORTHWEST CORNER OF SAID SECTION 24, FROM WHICH THE ARIZONA HIGHWAY DEPARTMENT BRASS CAP MARKING THE WEST QUARTER SECTION CORNER OF SAID SECTION 24 BEARS SOUTH 0 DEGREES 18 MINUTES 56 SECONDS EAST, 2652.01 FEET DISTANT;

THENCE NORTH 89 DEGREES 58 MINUTES 50 SECONDS EAST, 1351.43 FEET TO THE WEST 1/16 CORNER OF SAID SECTION 24;

THENCE SOUTH 0 DEGREES 16 MINUTES 45 SECONDS EAST, 40.00 FEET TO THE TRUE POINT OF BEGINNING;

THENCE CONTINUING SOUTH 0 DEGREES 16 MINUTES 45 SECONDS EAST, 2611.66 FEET TO A POINT ON THE EAST-WEST MID-SECTION LINE OF SECTION 24;

THENCE SOUTH 0 DEGREES 26 MINUTES 44 SECONDS EAST, 713.09 FEET TO THE SOUTHEAST CORNER OF SUBJECT PARCEL;

THENCE SOUTH 89 DEGREES 57 MINUTES 58 SECONDS WEST, 1307.23 FEET TO THE SOUTHWEST CORNER OF SUBJECT PARCEL, SAID POINT BEING ON THE EASTERLY RIGHT-OF-WAY LINE OF QUAIL RUN ROAD;

THENCE NORTH 0 DEGREES 38 MINUTES 54 SECONDS WEST, 713.11 FEET TO A POINT ON THE EAST-WEST MID-SECTION LINE, SECTION 24 AND FROM WHICH POINT THE WEST QUARTER SECTION CORNER OF SECTION 24 BEARS SOUTH 89 DEGREES 57 MINUTES 58 SECONDS WEST, 40.00 FEET;

THENCE NORTH 0 DEGREES 18 MINUTES 56 SECONDS WEST, ALONG THE EASTERLY RIGHT-OF-WAY LINE OF QUAIL RUN ROAD 2612.00 FEET;

THENCE NORTH 89 DEGREES 58 MINUTES 50 SECONDS EAST, 1311.40 FEET TO THE TRUE POINT OF BEGINNING.

Map No. 11

[illegible]

TOWNSHIP 3 South

TR380E 22 APR 1963

COMMISSIONERS
JEFF HATCH-MILLER - Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES



BRIAN C. McNEIL
Executive Director

ARIZONA CORPORATION COMMISSION

DATE: JULY 10, 2006
DOCKET NO: T-03872A-06-0178
TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Amy Bjelland. The recommendation has been filed in the form of an Opinion and Order on:

KMC TELECOM V, INC.
(CANCEL CC&N)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

JULY 19, 2006

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

JULY 25, 2006 and JULY 26, 2006

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Secretary's Office at (602) 542-3931.


BRIAN C. McNEIL
EXECUTIVE DIRECTOR

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 JEFF HATCH-MILLER, Chairman
4 WILLIAM A. MUNDELL
5 MARC SPITZER
6 MIKE GLEASON
7 KRISTIN K. MAYES

8 IN THE MATTER OF THE APPLICATION OF
9 KMC TELECOM V, INC. TO CANCEL ITS
10 CERTIFICATE OF CONVENIENCE AND
11 NECESSITY.

DOCKET NO. T-03872A-06-0178

DECISION NO. _____

OPINION AND ORDER

9 Open Meeting
10 July 25 and 26, 2006
11 Phoenix, Arizona

12 **BY THE COMMISSION:**

13 * * * * *

14 Having considered the entire record herein and being fully advised in the premises, the
15 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

16 **FINDINGS OF FACT**

17 1. On February 16, 2001, the Commission issued Decision No. 63380 which granted to
18 KMC Telecom V, Inc. ("Applicant") a Certificate of Convenience and Necessity ("Certificate") to
19 provide competitive facilities-based and resold intrastate telecommunications services with Arizona.

20 2. On March 17, 2006, Applicant filed with the Commission an application to cancel its
21 Certificate.

22 3. On May 1, 2006, the Commission's Utilities Division ("Staff") issued its Letter of
23 Insufficiency and First Set of Data Requests to Applicant.

24 4. On May 11, 2006, Applicant filed its responses to Staff's First Set of Data Requests.

25 5. On June 30, 2006, Staff filed its Staff Report recommending approval of the
26 application for cancellation of Certificate. In its application Applicant stated that it is no longer in
27 operation and that it has no customers in Arizona.

28 6. In response to Staff's data request Applicant specified that at no time did it provide
29 retail, end-user services. Applicant provided wholesale data services to other telecom carriers. Its

1 last remaining wholesale customer voluntarily switched to another provider in August 2005. As a
2 result, Applicant decided to abandon the market and close all operations nationally. Applicant does
3 not have any customers, employees or assets.

4 7. Staff stated that pursuant to Decision No. 63380, Applicant was required to procure a
5 performance bond of \$100,000. Applicant indicated to Staff that its performance bond is no longer
6 valid and has not been renewed since its expiration in September 2005, and informed Staff that it
7 does not have any affiliates currently offering telecommunications services in Arizona; nor does it
8 provide telecommunications services in any other state.

9 8. Arizona Administrative Code R14-2-1107(B) requires Applicant to publish legal
10 notice of an Application to discontinue or abandon local exchange or interexchange services in all
11 counties affected by the Application. Applicant's response to Staff's data request in this regard was
12 that Applicant at no time provided services to end-user customers; its last remaining wholesale
13 customer voluntarily switched to another service provider in August 2005; and Applicant was
14 unaware of which Arizona counties its wholesale customers were providing retail services to. For
15 these reasons, Applicant did not publish a legal notice.

16 9. Because Applicant did not provide services to end-user customers, has had no
17 wholesale customers since August 2005, and due to a lack of information regarding which
18 county(ies) in which to publish notice, the notice requirement of A.A.C. R14-2-1107(B) should
19 therefore be waived under the unique circumstances of this case. However, this waiver should not be
20 considered precedent for other carriers that wish to discontinue service. Absent the unique facts
21 presented in this case, we will strictly enforce the requirements set forth in A.A.C. R14-2-1107.

22 10. The Utilities Division Consumer Services Section reported that there have been no
23 complaints, inquiries or opinions against Applicant from 2003 through May 2, 2006.

24 11. Staff recommended approval of Applicant's application for authority to cancel its
25 Certificate.

26 CONCLUSIONS OF LAW

27 1. Applicant is a public service corporation within the meaning of Article XV of the
28 Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

2. The Commission has jurisdiction over Applicant and of the subject matter in this filing.

3. A.A.C. R14-2-1107 applies to any telecommunications company providing competitive local exchange or interexchange service on a resold or facilities-based basis that intends to discontinue service or to abandon all or a portion of its service area.

4. The cancellation of Applicant's Certificate is in the public interest.

5. Staff's recommendation is reasonable and should be adopted.

6. The notice requirement of A.A.C. R14-2-1107(B) should be waived, under the unique circumstances of this case.

ORDER

IT IS THEREFORE ORDERED that the Application of KMC Telecom V, Inc., for cancellation of its Certificate of Convenience and Necessity shall be, and is hereby, approved.

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1 IT IS FURTHER ORDERED that KMC Telecom V, Inc. shall no longer be subject to the
2 requirements of Decision No. 63380.

3 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

4 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.
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7 CHAIRMAN

COMMISSIONER

10
11 COMMISSIONER

COMMISSIONER

COMMISSIONER

12
13 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
14 Director of the Arizona Corporation Commission, have
15 hereunto set my hand and caused the official seal of the
16 Commission to be affixed at the Capitol, in the City of Phoenix,
17 this ____ day of _____, 2006.

18
19 BRIAN C. McNEIL
20 EXECUTIVE DIRECTOR

21
22 DISSENT _____

23
24 DISSENT _____

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26 AB:mj
27
28

SERVICE LIST FOR:

KMC TELECOM V, Inc.

DOCKET NO.:

T-03872A-06-0178

Michael Duke
KMC Data, LLC
1755 North Brown Road
Lawrenceville, GA 30043

Christopher Kempley, Chief Counsel
Legal Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, AZ 85007

Ernest G. Johnson, Director
Utilities Division
ARIZONA CORPORATION COMMISSION
1200 West Washington
Phoenix, AZ 85007

COMMISSIONERS
JEFF HATCH-MILLER - Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES



BRIAN C. McNEIL
Executive Director

ARIZONA CORPORATION COMMISSION

DATE: November 17, 2005

DOCKET NO: T-04170A-03-0141

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Amy Bjelland. The recommendation has been filed in the form of an Order on:

KPV ENTERPRISES, LLC
(CC&N/COPT)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00 p.m.** on or before:

NOVEMBER 28, 2005

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

DECEMBER 6 AND 7, 2005

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.


BRIAN C. McNEIL
EXECUTIVE DIRECTOR

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 JEFF HATCH-MILLER, Chairman
4 WILLIAM A. MUNDELL
5 MARC SPITZER
6 MIKE GLEASON
7 KRISTIN K. MAYES

8 IN THE MATTER OF THE APPLICATION OF
9 KPV ENTERPRISES, LLC FOR A CERTIFICATE
10 OF CONVENIENCE AND NECESSITY TO
11 PROVIDE CUSTOMER-OWNED PAY
12 TELEPHONE SERVICE IN THE STATE OF
13 ARIZONA.

DOCKET NO. T-04170A-03-0141

DECISION NO. _____

ORDER

14 Open Meeting
15 December 6 and 7, 2005
16 Phoenix, Arizona

17 **BY THE COMMISSION:**

18 Having considered the entire record herein and being fully advised in the premises, the
19 Commission finds, concludes, and orders that:

20 FINDINGS OF FACT

21 1. On March 4, 2003, KPV Enterprises, LLC ("Applicant") filed with the Arizona
22 Corporation Commission ("Commission") an application for a Certificate of Convenience and
23 Necessity ("Certificate") to provide customer-owned pay telephone ("COPT") service in the State of
24 Arizona.

25 2. In Decision No. 55817 (December 10, 1987), the Commission found that COPT
26 providers were public service corporations subject to the jurisdiction of the Commission.

27 3. In Decision No. 57797 (April 8, 1992), the Commission adopted A.A.C. R14-2-901
28 through R14-2-909 to regulate COPT providers.

4. Decision No. 58535 (February 14, 1994) adopted a Generic Tariff that establishes
rates and minimum service standards applicable to COPT service.

5. Pursuant to A.R.S. § 40-282, the Commission may issue Decisions regarding COPT
Certificates without a hearing.

6. Applicant has requested that a Certificate be granted and has indicated that it will provide COPT service pursuant to the rates, terms and conditions specified in the Generic COPT Tariff.

7. Applicant does not presently provide COPT services in Arizona.

8. On November 3, 2005, the Commission's Utilities Division Staff ("Staff") filed a Staff Report, recommending approval of the application.

9. Staff stated that the Applicant has provided a copy of its customer information placard in compliance with the Generic Tariff.

10. Staff also stated that increased pay telephone availability is in the public interest.

CONCLUSIONS OF LAW

1. Applicant is a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

2. The Commission has jurisdiction over Applicant and the subject matter of the application.

3. The provision of COPT service in Arizona by Applicant is in the public interest.

4. Applicant is a fit and proper entity to receive a Certificate for providing COPT service in Arizona.

5. Staff's recommendation is reasonable and should be adopted.

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ORDER

IT IS THEREFORE ORDERED that the Application of KPV Enterprises, LLC for a Certificate of Convenience and Necessity for authority to provide customer-owned pay telephone service in Arizona shall be, and the same is, hereby granted.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this ____ day of _____, 2005.

BRIAN C. McNEIL
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

AB:mj

SERVICE LIST FOR:

KPV Enterprises, LLC

DOCKET NO:

T-04170A-03-0141

Michael Gray
KPV Enterprises, LLC
1264 Rocky Hill Road
Knoxville, TN 37919

Christopher Kempley, Chief Counsel
Legal Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, AZ 85007

Ernest G. Johnson, Director
Utilities Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, AZ 85007

COMMISSIONERS
JEFF HATCH-MILLER - Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES



BRIAN C. McNEIL
Executive Director

ARIZONA CORPORATION COMMISSION

DATE: JULY 7, 2006

DOCKET NO: T-04229A-03-0915

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Amy Bjelland. The recommendation has been filed in the form of an Order on:

**LIGHTYEAR NETWORKS SOLUTIONS, LLC
(CANCEL CC&N/FACILITIES-BASED LOCAL EXCHANGE)**

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00 p.m.** on or before:

JULY 17, 2006

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

JULY 25, 2006 and JULY 26, 2006

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Secretary's Office at (602) 542-3931.


BRIAN C. McNEIL
EXECUTIVE DIRECTOR

1
2 **BEFORE THE ARIZONA CORPORATION COMMISSION**

3 COMMISSIONERS

4 JEFF HATCH-MILLER Chairman
5 WILLIAM A. MUNDELL
6 MARC SPITZER
7 MIKE GLEASON
8 KRISTIN K. MAYES

9 IN THE MATTER OF THE APPLICATION OF
10 LIGHTYEAR NETWORKS SOLUTIONS, LLC
11 FOR A CERTIFICATE OF CONVENIENCE AND
12 NECESSITY TO PROVIDE COMPETITIVE
13 RESOLD AND FACILITIES-BASED LOCAL
14 EXCHANGE AND INTEREXCHANGE
15 TELECOMMUNICATIONS SERVICES IN
16 ARIZONA.

DOCKET NO. T-04229A-03-0915

DECISION NO. _____

ORDER

11 Open Meeting
12 July 25 and 26, 2006
13 Phoenix, Arizona

14 **BY THE COMMISSION:**

15 Having considered the entire record herein and being fully advised in the premises, the
16 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

17 FINDINGS OF FACT

18 1. On December 3, 2004, the Commission issued Decision No. 67435 ("Lightyear
19 Decision") which granted to Lightyear Networks Solutions, LLC ("Lightyear") a Certificate of
20 Convenience and Necessity ("Certificate") to provide competitive resold and facilities-based local
21 exchange and interexchange telecommunications services in Arizona, with conditions. The
22 Certificate became necessary after Lightyear acquired all assets of its predecessor Lightyear
23 companies as part of a bankruptcy reorganization.

24 2. On November 30, 2005, Lightyear filed a Petition for Modification of Performance
25 Bond Condition or Alternatively for Extension of Time ("Petition").

26 3. On June 16, 2006, the Commission's Utilities Division ("Staff") filed a memorandum
27 recommending that Lightyear's Certificate for facilities-based long distance service be cancelled and
28 the performance bond be reduced to \$135,000.

1 4. The Lightyear Decision requires Lightyear to obtain a performance bond in the
2 amount of \$235,000. In its Petition, Lightyear proposed that the Commission accept an irrevocable
3 Letter of Credit in lieu of the bond; reduce the bond amount by \$100,000; or that the Commission
4 grant an extension of time for Lightyear to comply with the Lightyear Decision, as, in spite of its
5 "diligent efforts", Lightyear has been unable to procure the performance bond. Lightyear stated it has
6 made repeated attempts to obtain the necessary performance bond over the past year, including
7 approaching numerous bonding companies and offering upfront payment of the bond. Lightyear
8 stated in its Petition that "the current bonding market for telecommunications companies is extremely
9 tight." Lightyear further stated that it

10 found that some of the bonding companies were only prepared to consider
11 Lightyear's request for financing if one of Lightyear's members would
12 personally guarantee the bond, or alternatively, if Lightyear would pledge
13 100% of its collateral as a security, in addition to paying the bond
14 premiums. This requirement would put an unfair financial burden on the
15 personally guaranteeing member or on Lightyear. Furthermore, even if
16 Lightyear were prepared to post 100% of its collateral, it does not yet have
17 the necessary two to three years of strong financials needed for bond
18 approval.

19 5. Lightyear is currently providing long-distance services to Arizona customers.
20 Lightyear believes that the requirement that it obtain a performance bond will preclude Lightyear
21 from continuing to provide Arizona residents with resold long distance service. Staff stated that the
22 bond required by the Commission for each service Lightyear is currently certificated to provide is as
23 follows:

24 Resold long distance service - \$10,000;
25 Resold local exchange service - \$25,000;
26 Facilities-based long distance service - \$100,000; and
27 Facilities-based local exchange service - \$100,000.

28 6. Lightyear is not currently providing facilities-based long distance service, which
account for \$100,000 of the \$235,000 bond requirement, and proposed that its required bond be
reduced accordingly. Lightyear is willing to commit to an immediate withdrawal of its Certificate for
facilities-based long distance.

7. Lightyear also proposed to provide an irrevocable Letter of Credit, with the

1 Commission as the beneficiary, in the amount specified by the Commission. Lightyear asserted that a
2 Letter of Credit provides identical, if not superior, protections to the Commission as does a bond
3 because Letters of Credit cannot be cancelled without permission from the beneficiary.

4 8. Staff recommended that Lightyear be granted a one-year extension of time to comply
5 with the bond requirement of the Lightyear Decision. Staff further recommended cancellation of
6 Lightyears Certificate to provide facilities-based long distance service and a commensurate reduction
7 of the required bond to \$135,000.

8 CONCLUSIONS OF LAW

9 1. Applicant is a public service corporation within the meaning of Article XV of the
10 Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

11 2. The Commission has jurisdiction over Applicant and the subject matter of the
12 application.

13 3. Notice of the application was given in accordance with the law.

14 4. Staff's recommendations are reasonable and should be adopted.

15 ORDER

16 IT IS THEREFORE ORDERED that the authority to provide facilities-based long distance
17 service in the Certificate of Convenience and Necessity granted to Lightyear Networks Solutions,
18 LLC in Decision No. 67435 (Dec. 3, 2004) shall be, and hereby is, cancelled.

19 IT IS FURTHER ORDERED that Lightyear Networks Solutions, LLC's authority to provide
20 resold long distance service, resold local exchange service, and facilities-based local exchange
21 service pursuant to the Certificate of Convenience and Necessity granted to Lightyear Networks
22 Solutions, LLC in Decision No. 67435 (Dec. 3, 2004) shall remain in effect.

23 IT IS FURTHER ORDERED that the performance bond required by Decision No. 67435
24 shall be, and hereby is, reduced by \$100,000 to \$135,000.

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1 IT IS FURTHER ORDERED that Lightyear Networks Solutions, LLC shall procure and
2 docket proof of a performance bond equal to \$135,000 the earlier of 365 days from the effective date
3 of this Order or 30 days prior to the commencement of service.

4 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.
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8 CHAIRMAN

COMMISSIONER

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10 COMMISSIONER

COMMISSIONER

COMMISSIONER

11
12 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
13 Director of the Arizona Corporation Commission, have
14 hereunto set my hand and caused the official seal of the
Commission to be affixed at the Capitol, in the City of Phoenix,
this ____ day of _____, 2006.

15
16 BRIAN C. McNEIL
EXECUTIVE DIRECTOR

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18 DISSENT _____

19 DISSENT _____
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SERVICE LIST FOR: LIGHTYEAR NETWORKS SOLUTIONS, LLC

DOCKET NO.: T-04229A-03-0915

Michael W. Patten
ROSHKA, DeWULF & PATTEN
400 East Van Buren Street, Ste. 800
Phoenix, AZ 85004
Attorneys for Lightyear Networks Solutions, LLC

Christopher Kempley, Chief Counsel
Legal Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

Ernest G. Johnson, Director
Utilities Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

COMMISSIONERS
JEFF HATCH-MILLER - Chairman
WILLIAM A. MUNDELL
MIKE GLEASON
KRISTIN K. MAYES
BARRY WONG



BRIAN C. MCNEIL
Executive Director

ARIZONA CORPORATION COMMISSION

DATE: August 28, 2006

DOCKET NO.: T-03831A-06-0344

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Amy Bjelland. The recommendation has been filed in the form of an Order on:

MPOWER COMMUNICATIONS

(CC&N CANCELLATION)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00 p.m.** on or before:

SEPTEMBER 6, 2006

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

SEPTEMBER 19 AND 20, 2006

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.


BRIAN C. McNEIL
EXECUTIVE DIRECTOR

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 JEFF HATCH-MILLER, Chairman
4 WILLIAM A. MUNDELL
5 MIKE GLEASON
6 KRISTIN K. MAYES
7 BARRY WONG

8 IN THE MATTER OF THE APPLICATION OF
9 MPOWER COMMUNICATIONS FOR
10 CANCELLATION OF ITS CERTIFICATE OF
11 CONVENIENCE AND NECESSITY TO PROVIDE
12 FACILITIES-BASED AND RESOLD LOCAL
13 EXCHANGE TELECOMMUNICATIONS
14 SERVICES IN THE STATE OF ARIZONA.

DOCKET NO. T-03831A-06-0344

DECISION NO. _____

ORDER

15 Open Meeting
16 September 19 and 20, 2006
17 Phoenix, Arizona

18 **BY THE COMMISSION:**

19 Having considered the entire record herein and being fully advised in the premises, the
20 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

21 FINDINGS OF FACT

22 1. MPower Communications ("MPower" or "Applicant") has a Certificate of
23 Convenience and Necessity ("Certificate") to provide facilities-based and resold local exchange
24 telecommunications in the State of Arizona pursuant to Decision No. 62769 (August 2, 2000).

25 2. On May 25, 2006, Applicant filed an application for cancellation of its Certificate,
26 indicating that it has never initiated service in the State of Arizona and has no intention to offer
27 services.

28 3. Applicant further indicated that there are no outstanding obligations as it holds no
customer deposits.

4. On August 9, 2006, the Commission's Utilities Division Staff ("Staff") filed a Staff
Report, recommending approval of the application to cancel MPower's Certificate without a hearing.

5. Staff was notified by the Applicant on July 19, 2006, that legal notice of the
Application had been published in Maricopa County, and Staff indicated that no objections or
requests for a hearing regarding this Application to discontinue telecommunications services were

1 | filed.

2 6. Staff indicated that there are no open complaints, inquiries or opinions concerning
3 Applicant.

4 7. Numerous other carriers in Arizona offer services similar to those that Applicant is
5 currently certificated to provide.

6 8. No Arizona customers will be affected by the requested cancellation.

7 | CONCLUSIONS OF LAW

8 1. Applicant is a public service corporation within the meaning of Article XV of the
9 Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

10 2. The Commission has jurisdiction over Applicant and the subject matter of the
11 application.

12 3. The cancellation of Applicant's Certificate is in the public interest.

13 4. Notice of this Application was provided in accordance with Commission regulations.

14 5. Pursuant to A.R.S. § 40-282, the Commission may issue this Decision without a
15 hearing.

16 6. Staff's recommendations are reasonable and should be adopted.

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ORDER

IT IS THEREFORE ORDERED that the Certificate of Convenience and Necessity granted to MPower Communications Corp. in Decision No. 62769 is hereby cancelled.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I BRIAN C. McNEIL, Executive Director of the Arizona Corporation Commission, have hereunto, set my hand and caused the official seal of this Commission to be affixed at the Capitol, in the City of Phoenix, this _____ day of _____, 2006.

BRIAN C. McNEIL
EXECUTIVE DIRECTOR

DISSENT: _____

DISSENT: _____

AB: mj

SERVICE LIST FOR:

MPOWER COMMUNICATIONS CORP.

DOCKET NO.:

T-03831A-06-0344

Jean L. Kiddoo

Danielle C. Burt

BINGHAM McCUTCHEN

3000 K Street NW, Ste. 300

Washington, DC 20007

Christopher Kempley, Chief Counsel

Legal Division

ARIZONA CORPORATION COMMISSION

1200 West Washington Street

Phoenix, AZ 85007

Ernest G. Johnson, Director

Utilities Division

ARIZONA CORPORATION COMMISSION

1200 West Washington Street

Phoenix, AZ 85007

COMMISSIONERS
JEFF HATCH-MILLER - Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES



BRIAN C. McNEIL
Executive Director

ARIZONA CORPORATION COMMISSION

DATE: March 20, 2006

DOCKET NO: T-02431A-06-0042

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Amy Bjelland. The recommendation has been filed in the form of an Order on:

MCI NETWORK SERVICES, INC.

(CC&N CANCELLATION)

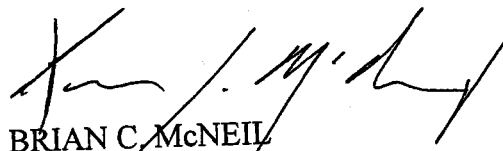
Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

MARCH 29, 2006

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

APRIL 4 AND 5, 2006

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.


BRIAN C. McNEIL
EXECUTIVE DIRECTOR

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 JEFF HATCH-MILLER, Chairman
4 WILLIAM A. MUNDELL
5 MARC SPITZER
6 MIKE GLEASON
7 KRISTIN K. MAYES

8 IN THE MATTER OF THE APPLICATION OF
9 MCI NETWORK SERVICES, INC. TO CANCEL
10 ITS CERTIFICATE OF CONVENIENCE AND
11 NECESSITY.

DOCKET NO. T-02431A-06-0042

DECISION NO. _____

OPINION AND ORDER

12 Open Meeting
13 April 4 and 5, 2006
14 Phoenix, Arizona

15 **BY THE COMMISSION:**

16 * * * * *

17 Having considered the entire record herein and being fully advised in the premises, the
18 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

19 **FINDINGS OF FACT**

20 1. MCI Network Services, Inc. ("Applicant") is a certificated interexchange carrier
21 pursuant to Decision Nos. 54507 (April 29, 1985) and 59446 (December 20, 1995).

22 2. On December 9, 2005, the Commission issued Decision No. 68345 which authorized
23 the transfer of Applicant's assets, facilities and wholesale customer contracts involving long distance
24 telephone, data and Internet services to MCI Communications Services, Inc. ("MCI
25 Communications"). As a condition of approving the transfer, Applicant was to file an application
26 canceling its Certificate within 60 days of Decision No. 68345.

27 3. On February 21, 2006, Applicant filed with the Commission an application to cancel
28 its Certificate of Convenience and Necessity ("Certificate").

4. On February 21, 2006, Applicant filed its Notice of Filing Affidavit of Publication.

5. On February 27, 2006, Staff filed its Staff Report recommending approval of the
application for cancellation of Certificate. In its application Applicant stated that its customers are
wholesale customers only; that all of its customers have transferred to, and are now being served by,

1 MCI Communications; that there are no deposits held by Applicant; and that there are several other
2 certificated service providers providing wholesale service in the affected geographic area.

3 **CONCLUSIONS OF LAW**

4 1. Applicant is a public service corporation within the meaning of Article XV of the
5 Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

6 2. The Commission has jurisdiction over Applicant and of the subject matter in this
7 filing.

8 3. The cancellation of Applicant's Certificate is in the public interest.

9 4. Staff's recommendation is reasonable and should be adopted.

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ORDER

IT IS THEREFORE ORDERED that the Application of MCI Network Services, Inc., for cancellation of its Certificate of Convenience and Necessity shall be, and is hereby, approved.

IT IS FURTHER ORDERED that MCI Network Services, Inc. shall no longer be subject to the requirements of Decision Nos. 54507 and 59446.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this ____ day of _____, 2006.

BRIAN C. McNEIL
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

AB:mj

1 SERVICE LIST FOR: MCI NETWORK, INC.

2 DOCKET NO.: T-04231A-06-0042

3 Thomas Campbell
4 Michael Hallam
5 LEWIS AND ROCA
6 40 North Central Avenue
7 Phoenix, AZ 85004

8 Thomas F. Dixon
9 MCI Network Services, Inc.
10 707 - 17th Street, #4200
11 Denver, CO 80202

12 Marsha Ward
13 MCI Network Services, Inc.
14 6 Concourse Parkway, Ste. 600
15 Atlanta, GA 30328

16 Christopher Kempley, Chief Counsel
17 Legal Division
18 ARIZONA CORPORATION COMMISSION
19 1200 West Washington Street
20 Phoenix, AZ 85007

21 Ernest G. Johnson, Director
22 Utilities Division
23 ARIZONA CORPORATION COMMISSION
24 1200 West Washington
25 Phoenix, AZ 85007

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COMMISSIONERS
JEFF HATCH-MILLER - Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES



BRIAN C. McNEIL
Executive Director

ARIZONA CORPORATION COMMISSION

DATE: November 18, 2005

DOCKET NO: T-03228A-05-0244

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Amy Bjelland. The recommendation has been filed in the form of an Order on:

MATRIX TELECOM, INC.
(CC&N/RESELLER)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00 p.m.** on or before:

NOVEMBER 28, 2005

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

DECEMBER 6 AND 7, 2005

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.


BRIAN C. McNEIL
EXECUTIVE DIRECTOR

1
2 **BEFORE THE ARIZONA CORPORATION COMMISSION**

3 COMMISSIONERS

4 JEFF HATCH-MILLER, Chairman
5 WILLIAM A. MUNDELL
6 MARC SPITZER
7 MIKE GLEASON
8 KRISTIN K. MAYES

9 IN THE MATTER OF THE APPLICATION OF
10 MATRIX TELECOM, INC. FOR A CERTIFICATE
11 OF CONVENIENCE AND NECESSITY TO
12 PROVIDE RESOLD LOCAL EXCHANGE
13 SERVICES AND FOR COMPETITIVE
14 CLASSIFICATION OF ITS SERVICES.

DOCKET NO. T-03228A-05-0244

DECISION NO. _____

ORDER

15 Open Meeting
16 December 6 and 7, 2005
17 Phoenix, Arizona

18 **BY THE COMMISSION:**

19 Having considered the entire record herein and being fully advised in the premises, the
20 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

21 **FINDINGS OF FACT**

22 1. On April 6, 2005, Matrix Telecom, Inc. ("Applicant") filed with the Commission an
23 application for a Certificate of Convenience and Necessity ("Certificate") to provide competitive
24 resold local exchange telecommunications services within the State of Arizona.

25 2. Applicant is a switchless reseller that purchases telecommunications services from
26 Global Crossing for resale to its customers.

27 3. In Decision No. 58926 (December 22, 1994), the Commission found that resold
28 telecommunications providers ("resellers") are public service corporations subject to the jurisdiction
of the Commission.

4. Applicant has authority to transact business in the State of Arizona.

5. On May 11, 2005, Applicant filed an Affidavit of Publication verifying that it had
published notice of its application that complies with the Commission's notice requirements.

1 6. On October 26, 2005, the Commission's Utilities Division Staff ("Staff") filed a Staff
2 Report recommending approval of the application, subject to certain conditions.

3 7. Regarding Applicant's technical capability to provide the requested services, Staff
4 stated that Matrix currently provides local exchange service in Texas and has an executive Staff of 75
5 employees with a total combined experience of over 74 years in the telecommunications industry.

6 8. Regarding Applicant's financial capability to provide the requested services, Staff
7 stated that Applicant provided unaudited financial statements for the twelve months ending
8 December 31, 2004, which list assets of \$4,393,000, negative equity of \$4,447,000, and net income
9 of \$1,482,000.

10 9. Regarding establishing rates and charges, and based on information obtained from the
11 Applicant, Staff has determined that Applicant's fair value rate base ("FVRB") is zero and is too
12 small to be useful in either a fair value analysis or in setting rates. Staff further stated that in general,
13 rates for competitive services are not set according to rate of return regulation. Staff has reviewed the
14 rates to be charged by the Applicant and believes they are just and reasonable, as they are comparable
15 to the rates of other competitive local exchange companies operating in Arizona and comparable to
16 the rates the Applicant charges in Texas and other jurisdictions in which applications to provide
17 service are pending. Therefore, while Staff considered the FVRB information submitted by the
18 Applicant, that information should not be given substantial weight in this analysis.

19 10. Staff stated that Applicant has no market power and that the reasonableness of its rates
20 will be evaluated in a market with numerous competitors. Staff believes that the rates in Applicant's
21 proposed tariffs for its competitive services will be just and reasonable and recommends that the
22 Commission approve them.

23 11. Staff recommended that Applicant's application for a Certificate to provide
24 competitive resold local exchange telecommunications services be granted subject to the following
25 conditions:

26 (a) That the Applicant complies with all Commission Rules, Orders and other
27 requirements relevant to the provision of intrastate telecommunications
services.

28 (b) That the Applicant abides by the quality of service standards that the

Commission approved for Qwest in Docket No. T-01051B-93-0183.

- (c) That the Applicant be prohibited from barring access to alternative local exchange service providers who wish to serve areas where the Applicant is the only provider of local exchange service facilities.
- (d) That the Applicant be required to notify the Commission immediately upon changes to the Applicant's name, address or telephone number.
- (e) That the Applicant cooperates with Commission investigations including, but not limited to, customer complaints.
- (f) That the rates proposed by this filing are for competitive services. In general, rates for competitive services are not set according to rate of return regulation. Staff obtained information from the company and has determined that its fair value rate base is zero.
- (g) That the Applicant offers Caller ID with the capability to toggle between blocking and unblocking the transmission of the telephone number at no charge.
- (h) That the Applicant offers Last Call Return service that will not return calls to telephone numbers that have the privacy indicator activated.

12. Staff further recommended that Applicant's resold local exchange Certificate should be conditioned upon the Applicant filing a conforming tariff for each service within its CC&N within 365 days from the date of an Order in this matter, or 30 days prior to providing service, whichever comes first. The tariff submitted must conform with the application and state that the Applicant does not collect advances, deposits and/or prepayments from its customers.

13. Staff also recommended the following:

- (a) That Applicant's Certificate should be conditioned upon the procurement of a performance bond as described below, and filing proof of that performance bond within 365 days from the date of an Order in this matter, or 30 days prior to providing service, whichever comes first.
- (b) That Applicant be required to procure a performance bond in the initial amount of \$25,000, with the minimum bond amount of \$25,000 to be increased if at any time it would be insufficient to cover all advances, deposits, prepayments collected from its customers, in the following manner: The bond amount should be increased in increments of \$12,500, with such increases to occur whenever the total amount of the advances, deposits or prepayments reaches a level within \$2,500 under the actual bond amount.

14. Staff recommended that if the Applicant fails to meet the timeframes outlined in Findings of Fact Nos. 12 and 13 above, then Applicant's resold local exchange Certificate should

1 become null and void.

2 15. The rates proposed by these filings are for competitive services.

3 16. Staff's recommendations as set forth herein are reasonable.

4 17. Applicant's fair value rate base is determined to be zero for purposes of this
5 proceeding.

6 **CONCLUSIONS OF LAW**

7 1. Applicant is a public service corporation within the meaning of Article XV of the
8 Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

9 2. The Commission has jurisdiction over Applicant and the subject matter of the
10 application.

11 3. Notice of the application was given in accordance with the law.

12 4. Applicant's provision of resold local exchange telecommunications services is in the
13 public interest.

14 5. Applicant is a fit and proper entity to receive the Certificate as conditioned herein for
15 providing competitive resold local exchange services in Arizona.

16 6. Staff's recommendations in Findings of Fact Nos. 11, 12, 13 and 14 should be
17 adopted.

18 7. Applicant's fair value rate base is not useful in determining just and reasonable rates
19 for the competitive services it proposes to provide to Arizona customers.

20 8. Applicant's rates, as they appear in its proposed tariffs, are just and reasonable and
21 should be approved.

22 **ORDER**

23 IT IS THEREFORE ORDERED that the application of Matrix Telecom, Inc. for a Certificate
24 of Convenience and Necessity for authority to provide competitive resold local exchange services is
25 hereby granted conditioned upon its compliance with the conditions recommended by Staff as set
26 forth above.

27 IT IS FURTHER ORDERED that if Matrix Telecom, Inc. fails to meet the timeframes
28 outlined in Findings of Fact Nos. 12 and 13, above, then the resold local exchange Certificate of

Convenience and Necessity conditionally granted herein shall become null and void.

IT IS FURTHER ORDERED that Staff's recommendations set forth in Findings of Fact Nos. 11, 12, 13 and 14 above are hereby adopted.

IT IS FURTHER ORDERED that Matrix Telecom, Inc. shall comply with the adopted Staff recommendations as set forth in Findings of Fact Nos. 11, 12, 13 and 14 above.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this ____ day of _____, 2005.

BRIAN C. McNEIL
EXECUTIVE DIRECTOR

DISSENT

DISSENT

AB:mj

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SERVICE LIST FOR: MATRIX TELECOM, INC.

DOCKET NO.: T-03228A-05-0244

Joan Burke
OSBORN MALEDON
2929 North Central Avenue, 21st Floor
Phoenix, AZ 85012

Christopher K. Kempley
Legal Division
ARIZONA CORPORATION COMMISSION
1200 W. Washington Street
Phoenix, Arizona 85007

Ernest G. Johnson
Utilities Division
ARIZONA CORPORATION COMMISSION
1200 W. Washington Street
Phoenix, Arizona 85007

COMMISSIONERS
JEFF HATCH-MILLER - Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES



BRIAN C. McNEIL
Executive Director

ARIZONA CORPORATION COMMISSION

DATE: July 6, 2006

DOCKET NO.: T-20455A-06-0265

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Amy Bjelland. The recommendation has been filed in the form of an Order on:

NATIONWIDE LONG DISTANCE SERVICE, INC.

(CC&N/RESELLER)

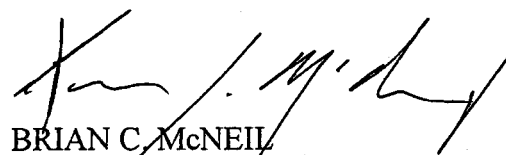
Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00 p.m.** on or before:

JULY 17, 2006

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

JULY 25 and 26, 2006

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.


BRIAN C. McNEIL
EXECUTIVE DIRECTOR

1
2 **BEFORE THE ARIZONA CORPORATION COMMISSION**

3 COMMISSIONERS

4 JEFF HATCH-MILLER, Chairman
5 WILLIAM A. MUNDELL
6 MARC SPITZER
7 MIKE GLEASON
8 KRISTIN K. MAYES

9 IN THE MATTER OF THE APPLICATION OF
10 NATIONWIDE LONG DISTANCE SERVICE, INC.
11 FOR A CERTIFICATE OF CONVENIENCE AND
12 NECESSITY TO PROVIDE COMPETITIVE
13 RESOLD INTEREXCHANGE
14 TELECOMMUNICATIONS SERVICES, EXCEPT
15 LOCAL EXCHANGE SERVICES.

DOCKET NO. T-20455A-06-0265

DECISION NO. _____

ORDER

16 Open Meeting
17 July 25 and 26, 2006
18 Phoenix, Arizona

19 **BY THE COMMISSION:**

20 Having considered the entire record herein and being fully advised in the premises, the
21 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

22 FINDINGS OF FACT

23 1. On April 21, 2006, Nationwide Long Distance Service, Inc. ("Applicant" or
24 "Nationwide") filed with the Commission an application for a Certificate of Convenience and
25 Necessity ("Certificate") to provide competitive resold interexchange telecommunications services
26 within the State of Arizona.

27 2. Applicant is a switchless reseller that purchases telecommunications services from a
28 variety of carriers for resale to its customers.

3. In Decision No. 58926 (December 22, 1994), the Commission found that resold
telecommunications providers ("resellers") are public service corporations subject to the jurisdiction
of the Commission.

4. Applicant has authority to transact business in the State of Arizona.

5. On June 1, 2006, Applicant filed an Affidavit of Publication indicating compliance

1 with the Commission's notice requirements.

2 6. On June 21, 2006, the Commission's Utilities Division Staff ("Staff") filed a Staff
3 Report which includes Staff's fair value rate base determination in this matter and recommends
4 approval of the application subject to certain conditions. The Staff Report addressed the overall
5 fitness of Applicant to receive a Certificate and also addressed whether its services should be
6 classified as competitive and whether its initial rates are just and reasonable.

7 7. In its Staff Report, Staff stated that Applicant provided unaudited financial statements
8 for the three months ending March 31, 2006, which list assets of \$53,154.73, equity of \$100,000 and
9 net loss of \$48,158.55.

10 8. Applicant's tariff indicates that it does not require deposits from its customers for
11 services. If at some future date, Applicant wants to collect advances, deposits and/or prepayments
12 from its resold interexchange customers, Staff recommended that the Applicant be required to file an
13 application with the Commission for approval. The application must reference the decision in this
14 docket and explain the Applicant's plans for procuring a performance bond.

15 9. In the event that the Applicant experiences financial difficulties, there will be minimal
16 impact to its customers because end users can access other interexchange providers via dial around
17 service or, in the longer term, the customer may desire to permanently switch to another provider.

18 10. Staff stated that based on information obtained from the Applicant, it has determined
19 that Applicant's fair value rate base ("FVRB") is zero and Applicant's FVRB is too small to be useful
20 in a fair value analysis, and is not useful in setting rates. Staff further stated that in general, rates for
21 competitive services are not set according to rate of return regulation, but are heavily influenced by
22 the market. Staff recommended that the Commission not set rates for Applicant based on the fair
23 value of its rate base.

24 11. Staff believes that Applicant has no market power and that the reasonableness of its
25 rates will be evaluated in a market with numerous competitors. In light of the competitive market in
26 which the Applicant will be providing its services, Staff believes that the rates in Applicant's
27 proposed tariffs for its competitive services will be just and reasonable, and recommends that the
28 Commission approve them.

1 12. Commission rules provide pricing flexibility by allowing competitive
2 telecommunication service companies to price their services at or below the maximum rates
3 contained in their tariffs as long as the pricing of those services complies with A.A.C. R14-2-1109.
4 This requires the Applicant to file a tariff for each competitive service that states the maximum rate
5 as well as the effective (actual) price that will be charged for the service. Any changes to the
6 Applicant's effective (actual) price for a service must comply with A.A.C. R14-2-1109, which
7 provides that the minimum rates for the applicant's competitive services must not be below the
8 Applicant's total service long run incremental costs of providing the services. The Applicant's
9 maximum rates should be the maximum rates proposed by the Applicant in its most recent tariffs on
10 file with the Commission. Future changes to the maximum rates must comply with A.A.C. R14-2-
11 1110.

12 13. Staff recommended approval of Applicant's application subject to the following:

- 13 (a) The Applicant should be ordered to comply with all Commission rules, orders,
14 and other requirements relevant to the provision of intrastate telecommunications
15 service;
- 16 (b) The Applicant should be ordered to maintain its accounts and records as
17 required by the Commission;
- 18 (c) The Applicant should be ordered to file with the Commission all financial and
19 other reports that the Commission may require, and in a form and at such times as the
20 Commission may designate;
- 21 (d) The Applicant should be ordered to maintain on file with the Commission all
22 current tariffs and rates, and any service standards that the Commission may require;
- 23 (e) The Applicant should be ordered to comply with the Commission's rules and
24 modify its tariffs to conform to these rules if it is determined that there is a conflict
25 between the Applicant's tariffs and the Commission's rules;
- 26 (f) The Applicant should be ordered to cooperate with Commission investigations
27 of customer complaints;
- 28 (g) The Applicant should be ordered to participate in and contribute to the Arizona
Universal Service Fund, as required by the Commission;
- (h) The Applicant should be ordered to notify the Commission immediately upon
changes to the Applicant's name, address or telephone number;

1 (i) If at some future date, the Applicant wants to collect from its customers an
2 advance, deposit, and/or prepayment, Staff recommends that the Applicant be required
3 to file such information with the Commission for Commission approval. Such
4 application must reference the Decision Number in this docket and must explain the
Applicant's plans for procuring a performance bond;

5 (j) The Applicant's interexchange service offerings should be classified as
6 competitive pursuant to A.A.C. R14-2-1108;

7 (k) The maximum rates for these services should be the maximum rates proposed
8 by the Applicant in its proposed tariffs. The minimum rates for the Applicant's
9 competitive services should be the Applicant's total service long run incremental
10 costs of providing those services as set forth in A.A.C. R14-2-1109;

11 (l) In the event that the Applicant states only one rate in its proposed tariff for a
12 competitive service, the rate stated should be the effective price to be charged for the
13 service as well as the service's maximum rate; and

14 (m) In the even the Applicant requests to discontinue and/or abandon its service
15 area it must provide notice to both the Commission and its customers in accordance
16 with A.A.C. R14-2-1107.

17 14. Staff further recommended that Applicant's Certificate should be conditioned upon the
18 Applicant filing conforming tariffs in accordance with this Decision within 365 days from the date of
19 an Order in this matter, or 30 days prior to providing service, whichever comes first.

20 15. Staff recommended that if the Applicant fails to meet the timeframes outlined in
21 Finding of Fact No. 14, that Applicant's Certificate should become null and void after due process.

22 16. Applicant will not collect advances, prepayments or deposits from customers.

23 17. The rates proposed by this filing are for competitive services.

24 18. Staff's recommendations as set forth herein are reasonable.

25 19. Applicant's fair value rate base is zero.

26 CONCLUSIONS OF LAW

27 1. Applicant is a public service corporation within the meaning of Article XV of the
28 Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

1 The Commission has jurisdiction over Applicant and the subject matter of the
application.

2 Notice of the application was given in accordance with the law.

4. Applicant's provision of resold interexchange telecommunications services is in the public interest.

5. Applicant is a fit and proper entity to receive a Certificate as conditioned herein for providing competitive resold interexchange telecommunications services in Arizona.

6. Staff's recommendations should be adopted.

7. Applicant's fair value rate base is not useful in determining just and reasonable rates for the competitive services it proposes to provide to Arizona customers.

8. Applicant's rates, as they appear in its proposed tariffs, are just and reasonable and should be approved.

ORDER

IT IS THEREFORE ORDERED that the application of Nationwide Long Distance Service, Inc. for a Certificate of Convenience and Necessity for authority to provide competitive resold interexchange telecommunications services, except local exchange services shall be, and hereby is, granted, conditioned upon its compliance with the condition recommended by Staff as set forth in Findings of Fact Nos. 13 and 14, above.

IT IS FURTHER ORDERED that Staff's recommendations set forth in Findings of Fact Nos. 13 and 14 above are hereby adopted.

IT IS FURTHER ORDERED that Nationwide Long Distance Service, Inc. shall comply with the adopted Staff recommendations as set forth in Findings of Fact Nos. 13 and 14 above.

IT IS FURTHER ORDERED that if Nationwide Long Distance Service, Inc. fails to meet the timeframes outlined in Findings of Fact. No. 14 above that the Certificate conditionally granted herein shall become null and void after due process.

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1 IT IS FURTHER ORDERED that Nationwide Long Distance Service, Inc. shall not require
2 its Arizona customers to pay advances, prepayments or deposits for any of its products or services.

3 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

4 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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7 CHAIRMAN

COMMISSIONER

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9 COMMISSIONER

COMMISSIONER

COMMISSIONER

10 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
11 Director of the Arizona Corporation Commission, have
12 hereunto set my hand and caused the official seal of the
13 Commission to be affixed at the Capitol, in the City of Phoenix,
14 this ____ day of _____, 2006.

15 BRIAN C. McNEIL
16 EXECUTIVE DIRECTOR

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18 DISSENT _____

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21 DISSENT _____

22 AB:mj
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1 SERVICE LIST FOR: NATIONWIDE LONG DISTANCE SERVICE, INC.

2 DOCKET NO.: T-20455A-06-0265

3 Lance J. M. Steinhart
4 1720 Windward Concourse, Ste. 250
5 Alpharetta, GA 30005
6 Attorney for Nationwide Long Distance Service, Inc.

7 Christopher Kempley, Chief Counsel
8 Legal Division
9 ARIZONA CORPORATION COMMISSION
10 1200 West Washington Street
11 Phoenix, Arizona 85007

12 Ernest G. Johnson, Director
13 Utilities Division
14 ARIZONA CORPORATION COMMISSION
15 1200 West Washington Street
16 Phoenix, Arizona 85007

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COMMISSIONERS
JEFF HATCH-MILLER - Chairman
WILLIAM A. MUNDELL
MIKE GLEASON
KRISTIN K. MAYES
BARRY WONG



BRIAN C. MCNEIL
Executive Director

ARIZONA CORPORATION COMMISSION

DATE: August 4, 2006

DOCKET NO.: T-20398A-05-0551

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Amy Bjelland. The recommendation has been filed in the form of an Order on:

NAVIGATOR TELECOMMUNICATIONS, LLC

(CC&N/RESELLER)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00 p.m.** on or before:

AUGUST 14, 2006

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

AUGUST 22 AND 23, 2006

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.


BRIAN C. McNEIL
EXECUTIVE DIRECTOR

1
2 **BEFORE THE ARIZONA CORPORATION COMMISSION**

3 COMMISSIONERS

4 JEFF HATCH-MILLER, Chairman
5 WILLIAM A. MUNDELL
6 MIKE GLEASON
7 KRISTIN K. MAYES
8 BARRY WONG

9 IN THE MATTER OF THE APPLICATION OF
10 NAVIGATOR TELECOMMUNICATIONS, LLC
11 FOR A CERTIFICATE OF CONVENIENCE AND
12 NECESSITY TO PROVIDE RESOLD
13 INTEREXCHANGE TELECOMMUNICATIONS
14 SERVICES.

DOCKET NO. T-20398A-05-0551

DECISION NO. _____

15 ORDER

16 Open Meeting
17 August 22 and 23, 2006
18 Phoenix, Arizona

19 **BY THE COMMISSION:**

20 Having considered the entire record herein and being fully advised in the premises, the
21 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

22 FINDINGS OF FACT

23 1. On August 2, 2005, Navigator Telecommunications, LLC ("Applicant" or
24 "Navigator") filed with the Commission an application for a Certificate of Convenience and
25 Necessity ("Certificate") to provide resold interexchange telecommunications services within the
26 State of Arizona.

27 2. Applicant is a switchless reseller that purchases telecommunications services from a
28 variety of carriers for resale to its customers.

29 3. In Decision No. 58926 (December 22, 1994), the Commission found that resold
30 telecommunications providers ("resellers") are public service corporations subject to the jurisdiction
31 of the Commission.

32 4. Applicant has authority to transact business in the State of Arizona.

33 5. On August 24, 2005, Applicant filed an Affidavit of Publication indicating compliance

1 with the Commission's notice requirements.

2 6. On July 18, 2006, the Commission's Utilities Division Staff ("Staff") filed a Staff
3 Report which includes Staff's fair value rate base determination in this matter and recommends
4 approval of the application subject to certain conditions. The Staff Report addressed the overall
5 fitness of Applicant to receive a Certificate and also addressed whether its services should be
6 classified as competitive and whether its initial rates are just and reasonable.

7 7. In its Staff Report, Staff stated that Applicant provided unaudited financial statements
8 for the periods ending December 31, 2005 and 2004, which list assets of \$6,320,776, deficit of
9 \$11,138,609 and net loss of \$3,641,833.

10 8. Applicant's tariff indicates that it does not require deposits from its customers for
11 services. If at some future date, Applicant wants to collect advances, deposits and/or prepayments
12 from its resold interexchange customers, Staff recommended that the Applicant be required to file an
13 application with the Commission for approval. The application must reference the decision in this
14 docket and explain the Applicant's plans for procuring a performance bond.

15 9. In the event that the Applicant experiences financial difficulties, there will be minimal
16 impact to its customers because end users can access other interexchange providers via dial around
17 service or, in the longer term, the customer may desire to permanently switch to another provider.

18 10. Staff stated that based on information obtained from the Applicant, it has determined
19 that Applicant's fair value rate base ("FVRB") is zero and Applicant's FVRB is too small to be useful
20 in a fair value analysis, and is not useful in setting rates. Staff further stated that in general, rates for
21 competitive services are not set according to rate of return regulation, but are heavily influenced by
22 the market. Staff recommended that the Commission not set rates for Applicant based on the fair
23 value of its rate base.

24 11. Staff believes that Applicant has no market power and that the reasonableness of its
25 rates will be evaluated in a market with numerous competitors. In light of the competitive market in
26 which the Applicant will be providing its services, Staff believes that the rates in Applicant's
27 proposed tariffs for its competitive services will be just and reasonable, and recommends that the
28 Commission approve them.

12. Commission rules provide pricing flexibility by allowing competitive telecommunication service companies to price their services at or below the maximum rates contained in their tariffs as long as the pricing of those services complies with A.A.C. R14-2-1109. This requires the Applicant to file a tariff for each competitive service that states the maximum rate as well as the effective (actual) price that will be charged for the service. Any changes to the Applicant's effective (actual) price for a service must comply with A.A.C. R14-2-1109, which provides that the minimum rates for the applicant's competitive services must not be below the Applicant's total service long run incremental costs of providing the services. The Applicant's maximum rates should be the maximum rates proposed by the Applicant in its most recent tariffs on file with the Commission. Future changes to the maximum rates must comply with A.A.C. R14-2-1110.

13. Staff recommended approval of Applicant's application subject to the following:

- (a) The Applicant should be ordered to comply with all Commission rules, orders, and other requirements relevant to the provision of intrastate telecommunications service;
- (b) The Applicant should be ordered to maintain its accounts and records as required by the Commission;
- (c) The Applicant should be ordered to file with the Commission all financial and other reports that the Commission may require, and in a form and at such times as the Commission may designate;
- (d) The Applicant should be ordered to maintain on file with the Commission all current tariffs and rates, and any service standards that the Commission may require;
- (e) The Applicant should be ordered to comply with the Commission's rules and modify its tariffs to conform to these rules if it is determined that there is a conflict between the Applicant's tariffs and the Commission's rules;
- (f) The Applicant should be ordered to cooperate with Commission investigations of customer complaints;
- (g) The Applicant should be ordered to participate in and contribute to the Arizona Universal Service Fund, as required by the Commission;
- (h) The Applicant should be ordered to notify the Commission immediately upon changes to the Applicant's name, address or telephone number;

1 (i) If at some future date, the Applicant wants to collect from its customers an
2 advance, deposit, and/or prepayment, Staff recommends that the Applicant be required
3 to file such information with the Commission for Commission approval. Such
4 application must reference the Decision Number in this docket and must explain the
Applicant's plans for procuring a performance bond;

5 (j) The Applicant's intrastate interexchange service offerings should be classified
6 as competitive pursuant to A.A.C. R14-2-1108;

7 (k) The maximum rates for these services should be the maximum rates proposed
8 by the Applicant in its proposed tariffs. The minimum rates for the Applicant's
9 competitive services should be the Applicant's total service long run incremental
10 costs of providing those services as set forth in A.A.C. R14-2-1109;

11 (l) In the event that the Applicant states only one rate in its proposed tariff for a
12 competitive service, the rate stated should be the effective price to be charged for the
13 service as well as the service's maximum rate; and

14 (m) In the event the Applicant requests to discontinue and/or abandon its service
15 area it must provide notice to both the Commission and its customers in accordance
16 with A.A.C. R14-2-1107.

17 14. Staff further recommended that Applicant's Certificate should be conditioned upon the
18 Applicant filing conforming tariffs in accordance with this Decision within 365 days from the date of
19 an Order in this matter, or 30 days prior to providing service, whichever comes first. Staff
20 recommended that if the Applicant fails to meet this timeframe, that Applicant's Certificate should
21 become null and void after due process.

22 15. Applicant will not collect advances, prepayments or deposits from customers.

23 16. The rates proposed by this filing are for competitive services.

24 17. Staff's recommendations as set forth herein are reasonable.

25 18. Applicant's fair value rate base is zero.

26 CONCLUSIONS OF LAW

27 1. Applicant is a public service corporation within the meaning of Article XV of the
28 Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

29 2. The Commission has jurisdiction over Applicant and the subject matter of the
30 application.

31 3. This Application may be approved without a hearing pursuant to A.R.S. § 40-282.

IT IS THEREFORE ORDERED that the application of Navigator Telecommunications, LLC for a Certificate of Convenience and Necessity for authority to provide competitive resold interexchange telecommunications services, except local exchange services shall be, and hereby is, granted, conditioned upon its compliance with the condition recommended by Staff as set forth in Findings of Fact Nos. 13 and 14, above.

IT IS FURTHER ORDERED that Staff's recommendations set forth in Findings of Fact Nos. 13 and 14 above are hereby adopted.

IT IS FURTHER ORDERED that Navigator Telecommunications, LLC shall comply with the adopted Staff recommendations as set forth in Findings of Fact Nos. 13 and 14 above.

IT IS FURTHER ORDERED that if Navigator Telecommunications, LLC fails to meet the timeframe outlined in Findings of Fact. No. 14 above that the Certificate conditionally granted herein shall become null and void after due process.

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IT IS FURTHER ORDERED that Navigator Telecommunications, LLC shall not require its Arizona customers to pay advances, prepayments or deposits for any of its products or services.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN _____ COMMISSIONER _____

COMMISSIONER _____ COMMISSIONER _____ COMMISSIONER _____

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this ____ day of _____, 2006.

BRIAN C. McNEIL
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

AB:mj

1 SERVICE LIST FOR: NAVIGATOR TELECOMMUNICATIONS, LLC
2 DOCKET NO.: T-20398A-05-0551
3 Michael T. Hallam
4 LEWIS AND ROCA
40 North Central Avenue
Phoenix, AZ 85004
5 Attorney for Navigator Telecommunications, LLC
6 Christopher Kempley, Chief Counsel
Legal Division
7 ARIZONA CORPORATION COMMISSION
1200 West Washington Street
8 Phoenix, Arizona 85007
9 Ernest G. Johnson, Director
Utilities Division
10 ARIZONA CORPORATION COMMISSION
1200 West Washington Street
11 Phoenix, Arizona 85007

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COMMISSIONERS
JEFF HATCH-MILLER - Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES



BRIAN C. McNEIL
Executive Director

ARIZONA CORPORATION COMMISSION

DATE: FEBRUARY 27, 2006

DOCKET NO: T-03380A-03-0513

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Amy Bjelland. The recommendation has been filed in the form of an Order on:

NORTH AMERICAN COMMUNICATIONS CONTROL, INC.
(CANCEL CC&N)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00 p.m.** on or before:

MARCH 8, 2006

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

MARCH 15, 2006 and MARCH 16, 2006

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Secretary's Office at (602) 542-3931.


BRIAN C. McNEIL
EXECUTIVE DIRECTOR

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 JEFF HATCH-MILLER, Chairman
4 WILLIAM A. MUNDELL
5 MARC SPITZER
6 MIKE GLEASON
7 KRISTIN K. MAYES

8 IN THE MATTER OF THE APPLICATION OF
9 NORTH AMERICAN COMMUNICATIONS
CONTROL, INC. FOR CANCELLATION OF ITS
CERTIFICATE OF CONVENIENCE AND
NECESSITY TO PROVIDE RESOLD
COMPETITIVE TELECOMMUNICATIONS
SERVICES IN THE STATE OF ARIZONA.

DOCKET NO. T-03380A-03-0513

DECISION NO. _____

ORDER

10 Open Meeting
11 March 15 and 16, 2006
12 Phoenix, Arizona

13 **BY THE COMMISSION:**

14 Having considered the entire record herein and being fully advised in the premises, the
15 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

16 FINDINGS OF FACT

17 1. North American Communications Control, Inc. ("Applicant") has a Certificate of
18 Convenience and Necessity ("Certificate") to provide resold competitive telecommunications
19 services in the State of Arizona pursuant to Decision No. 61812 (June 29, 1999).

20 2. On July 25, 2003, Applicant filed an application for cancellation of its Certificate,
21 indicating that it does not have any customers in Arizona.

22 3. On December 23, 2005, Staff filed a letter in this docket stating that Staff had been
23 unable to reach Applicant via telephone and requesting that Applicant contact Staff regarding its
24 application.

25 4. On February 9, 2006, Staff filed a Staff Report, stating that although it was unable to
26 obtain a response from Applicant and its certified letter sent to applicant was returned to Staff
27 unopened and marked Return to Sender, it recommended approval of the application to cancel
28 Applicant's Certificate without a hearing.

5. Numerous other carriers in Arizona offer services similar to those that Applicant is

1 currently certificated to provide.

2 6. No Arizona customers will be affected by the requested cancellation.

3 CONCLUSIONS OF LAW

4 1. Applicant is a public service corporation within the meaning of Article XV of the
5 Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

6 2. The Commission has jurisdiction over Applicant and the subject matter of the
7 application.

8 3. The cancellation of Applicant's CC&N is in the public interest.

9 4. Pursuant to A.R.S. § 40-282, the Commission may issue this Decision without a
10 hearing.

11 5. Staff's recommendation is reasonable and should be adopted.

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ORDER

IT IS THEREFORE ORDERED that the Certificate of Convenience and Necessity granted to North American Communications Control, Inc. in Decision No. 61812 is hereby cancelled.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I BRIAN C. McNEIL, Executive Director of the Arizona Corporation Commission, have hereunto, set my hand and caused the official seal of this Commission to be affixed at the Capitol, in the City of Phoenix, this _____ day of _____, 2006.

BRIAN C. McNEIL
Executive Director

DISSENT: _____

DISSENT: _____

AB: mj

1 SERVICE LIST FOR:

NORTH AMERICAN COMMUNICATIONS
CONTROL, INC.

2 DOCKET NO.:

T-03380A-03-0513

3

4 Bridgette Nally
NORTH AMERICAN COMMUNICATIONS CONTROL, INC.
95 Tree Road
5 Centereach, NY 11720

6 Christopher Kempley, Chief Counsel
Legal Division
7 ARIZONA CORPORATION COMMISSION
1200 West Washington Street
8 Phoenix, AZ 85007

9 Ernest G. Johnson, Director
Utilities Division
10 ARIZONA CORPORATION COMMISSION
1200 West Washington Street
11 Phoenix, AZ 85007

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COMMISSIONERS
JEFF HATCH-MILLER - Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES



BRIAN C. McNEIL
Executive Director

ARIZONA CORPORATION COMMISSION

DATE: January 31, 2006

DOCKET NO: W-20379A-05-0489 et al.

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Amy Bjelland. The recommendation has been filed in the form of an Opinion and Order on:

**PERKINS MOUNTAIN UTILITY COMPANY AND
PERKINS MOUNTAIN WATER COMPANY**

(CC&N)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00 p.m.** on or before:

FEBRUARY 9, 2006

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

FEBRUARY 14 AND 15, 2006

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.


BRIAN C. McNEIL
EXECUTIVE DIRECTOR

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 JEFF HATCH-MILLER, Chairman
4 WILLIAM A. MUNDELL
5 MARC SPITZER
6 MIKE GLEASON
7 KRISTIN K. MAYES

8 IN THE MATTER OF THE APPLICATION OF
9 PERKINS MOUNTAIN UTILITY COMPANY FOR
10 A CERTIFICATE OF CONVENIENCE AND
11 NECESSITY.

DOCKET NO. SW-20379A-05-0489

12 IN THE MATTER OF THE APPLICATION OF
13 PERKINS MOUNTAIN WATER COMPANY FOR
14 A CERTIFICATE OF CONVENIENCE AND
15 NECESSITY.

DOCKET NO. W-20380A-05-0490

DECISION NO. _____

OPINION AND ORDER

11 DATE OF HEARING:

December 5, 2005

12 PLACE OF HEARING:

Phoenix, Arizona

13 ADMINISTRATIVE LAW JUDGE:

Amy B. Bjelland

14 APPEARANCES:

Mr. Robert J. Metli, SNELL & WILMER, on
behalf of Applicant;

Mr. Keith Layton, Staff Attorney, Legal
Division, on behalf of the Utilities Division of
the Arizona Corporation Commission; and

Mr. Booker T. Evans, GREENBERG
TRAURIG, on behalf of Sports Entertainment,
LLC.

20 **BY THE COMMISSION:**

21 On July 7, 2005, Perkins Mountain Utility Company ("Perkins Utility") filed with the Arizona
22 Corporation Commission ("Commission") an application for a Certificate of Convenience and
23 Necessity ("Certificate" or "CC&N") to provide potable wastewater to a master-planned community
24 in Mohave County, Arizona.

25 On July 7, 2005, Perkins Mountain Water Company ("Perkins Water") filed an application
26 with the Commission for a Certificate to provide water to a master-planned community in Mohave
27 County, Arizona.

On July 22, 2005, Perkins Utility and Perkins Water (collectively, "the Utilities") filed a Notice of Filing of Certificate of Good Standing in the above dockets.

On August 8, 2005, the Commission's Utilities Division Staff ("Staff") filed Insufficiency Letters in the above dockets.

On August 25, 2005, Scott Fisher of Sports Entertainment filed a request that Perkins Utility include a portion of Sports Entertainment's parcel in the proposed Certificate area for docket SW-20379A-05-0489.

On August 30, 2005, Perkins Utility and Perkins Water filed responses in the above dockets.

On September 14, 2005, Perkins Utility and Perkins Water filed a Notice of Filing Amended Legal Description for the above dockets.

On September 19, 2005, Staff filed its Sufficiency Letters indicating that Perkins Utility and Perkins Water applications have met the sufficiency requirements of A.A.C. R14-2-402C.

On September 27, 2005, Sports Entertainment filed an Application to Intervene in Docket No. SW-20379A-05-0489 and Docket No. W-20380A-05-0490.

On November 10, 2005, Staff filed its Staff Report.

On November 23, 2005, Perkins Utility and Perkins Water filed a Response to Staff's Report.

On November 29, 2005, Sports Entertainment was granted intervention for both dockets.

On December 5, 2005, a hearing was convened before a duly authorized Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. The Utilities, Sports Entertainment and Staff entered appearances through counsel. Staff made its closing statement. At the conclusion of the hearing, pending docketing of closing briefs by the Utilities and Sports Entertainment, the matter was taken under advisement pending issuance of a Recommended Opinion and Order.

On January 6, 2006, the Utilities and Sports Entertainment filed closing briefs in this docket.

* * * * *

Having considered the entire record herein and being fully advised in the premises, the Commission finds, concludes, and orders that:

FINDINGS OF FACT**Background of Application**

1 Perkins Utility is a Nevada corporation formed for the purpose of providing
2 wastewater utility service to two master-planned communities developed by Rhodes Homes Arizona,
3 LLC ("Rhodes") in Mohave County. Golden Valley South consists of 5,750 acres and is located
4 approximately five miles southeast of Kingman, Arizona. Golden Valley South will include an active
5 retiree community with an 18-hole golf course, an interconnected community for all age groups, and
6 includes an industrial/business park area and community commercial areas. At build-out, it is
7 expected to be comprised of more than 33,000 dwelling units. The Villages at White Hills consists of
8 2,727 acres and is located along U.S. Highway 93, approximately 29 miles south of Hoover Dam,
9 with a commercial area along U.S. Highway 93 that is expected to serve both residents and travelers.
10 The Villages at White Hills is intended to be a self-contained community to provide affordable homes
11 for commuters to the Las Vegas metropolitan area. At build-out, it is expected to be comprised of
12 more than 20,000 dwelling units. Open spaces, including the golf course, will be irrigated with
13 reclaimed water from the wastewater reclamation plant.

14 Perkins Water is a Nevada corporation formed for the purpose of providing water
15 utility service to all of the residents and businesses in the master-planned communities of Golden
16 Valley South and The Villages at White Hills.

17 Major landowners in the area requested that the Utilities provide wastewater and water
18 service. The Utilities notified the owners of record of eight small parcels contained within the
19 boundaries of the planned development of the Application via mail on July 22, 2005.

Perkins Mountain Utility Company Wastewater System

20 Perkins Utility plans to finance the wastewater utility system using a combination of
21 equity provided by Rhodes, advances in aid of construction and contributions in aid of construction.
22 Perkins Utility will initially be capitalized with equity of \$50,000.

23 The proposed facility for Golden Valley South is an 8.0 million gallon per day
24 ("MGD") activated sludge wastewater treatment plant ("WWTP") and approximately 100,000 lineal
25 feet of collection system to serve 152 customers in the first year and 2,042 customers by the fifth
26

1 year. For the Villages at White Hills, the proposed facility is a 6.0 MGD activated sludge WWTP and approximately 41,000 lineal feet of collection system to serve zero customers in the first year and 1,025 customers by the fifth year. A reclaimed water system is also proposed that will consist of pump station/storage sites and 25,000 lineal feet of force mains for beneficial use for irrigation of large landscaped areas or golf course.

6. Staff stated that because Perkins Utility has no plant facilities at this time, an Arizona Department of Environmental Quality ("ADEQ") compliance status is not available. Because Perkins Utility has not received its ADEQ Certificate of Approval to Construct ("ATC") for construction of the facilities, Staff recommended that Perkins Utility file with Docket Control, as a compliance item in this docket, copies of the ATC for phase 1 of each project when received by Perkins Utility, but no later than 24 months after the effective date of the order granting this application. Staff further recommended that Perkins Utility file with Docket Control, as a compliance item in this docket, copies of each project's Aquifer Protection Permit within 24 months after a decision is issued in this proceeding.

7. Pursuant to Section 208 of the Federal Water Pollution Control Act, each state is required to develop and implement area-wide water quality management plans for pollution control purposes. Staff recommended that Perkins Utility obtain Section 208 approval from ADEQ within 24 months from the effective date of the decision in this matter and, also within 24 months from the effective date of the decision in this matter, file a copy of the Section 208 approval for the requested area with Docket Control as a compliance item in this docket.

8. Pursuant to the Commission's rules, Perkins Utility provided five-year projections for plant values, operating revenues and expenses, and number of customers. Such projections are necessary to establish rates for new companies due to the lack of historical data. Staff recommended eliminating Perkins Utility's proposed hookup fees and stated that it is the Commission's normal procedure to allow hookup fees only to companies already holding and operating under a CC&N. Staff recommended that the Commission find that the projected fair value rate base will be \$2,581,198 at the end of the first year.

9. Perkins Utility proposed an initial residential flat rate of \$52.00. The elimination of

the hookup fees will reduce Perkins Utility's source of capital by \$219,370 in the first year and \$4,267,909 in the fifth year for a total capital shortfall of \$9,955,619. Staff recommended Perkins Utility seek other means of financing that do not include contributions and recommended an initial residential flat rate of \$75.00. Perkins Utility's proposed and Staff's recommended rates and charges for initial wastewater service are as follows:

Monthly Customer Charges – TreatmentCompany ProposedStaff Recommended

3/4" Meter	\$52.00	\$75.00
1" Meter	60.00	88.00
1-1/2" Meter	173.00	250.00
2" Meter	276.00	400.00
3" Meter	518.00	750.00
4" Meter	863.00	1,250.00
6" Meter	1,725.00	2,500.00
8" Meter	2,760.00	4,000.00

Hookup Fees (CIAC)Company ProposedStaff Recommended

3/4" Meter	\$1,500.00	\$ --
1" Meter	2,500.00	--
1-1/2" Meter	5,000.00	--
2" Meter	8,000.00	--
3" Meter	15,000.00	--
4" Meter	25,000.00	--
6" Meter	50,000.00	--
8" Meter	80,000.00	--

Service ChargesCompany ProposedStaff Recommended

Establishment (a)	\$30.00	\$30.00
Establishment (After Hours) (a)	50.00	40.00
Re-Establishment (Within 12 Months)	*	*
Reconnection (Delinquent) (a)	40.00	30.00
NSF Check (a)	25.00	25.00
Deferred Payment	1.5%	1.5%
Late Payment Penalty (Per Month)	1.5%	1.5%
Deposit Interest	**	**
Deposit	**	**
Moving service at customer request	***	***

(a) Collected only if customer is not also a water customer

* Number of months off system times the monthly customer charge for meter size

** Per Commission Rule R14-2-603.B

*** Cost to include parts, labor, overhead and all applicable taxes

10. Staff recommended the approval of its rates and charges and that Perkins Utility be

1 required to file with Docket Control, as a compliance item in this docket, a tariff consistent with the
2 rates and charges authorized by the Commission within 30 days of the decision in this matter.

3 **Perkins Mountain Water Company Water System**

4 11. Perkins Water plans to finance the water utility system using a combination of equity
5 provided by Rhodes, advances in aid of construction and contributions in aid of construction. Perkins
6 Water will initially be capitalized with equity of \$50,000.

7 12. The proposed system for Golden Valley South includes 15 wells, each producing at
8 1,200 gallons per minute ("GPM"); 10 million gallons of storage, at a minimum of three sites;
9 booster systems; and approximately 133,000 lineal feet of transmission/distribution main to serve 150
10 customers in the first year and 2,040 customers by the fifth year. The proposed system for The
11 Villages at White Hills includes 25 wells, each producing at 500 GPM; five tank/pumping sites, with
12 tanks ranging from 0.3 MG to 3.0 MG; and approximately 56,000 lineal feet of
13 transmission/distribution main to serve zero customers in the first year and 1,025 customers by the
14 fifth year.

15 13. Staff stated that, because Perkins Water does not have any plant facilities at this time,
16 an ADEQ compliance status is not applicable at this time. Staff recommended that, because Perkins
17 Water has not received its ADEQ Certificate of ATC for construction of the facilities, that Perkins
18 Water file with Docket Control, as a compliance item in this docket, copies of the ATC for phase 1 of
19 each project when received by Perkins Water, but no later than 24 months after the effective date of
20 the order granting this application.

21 14. Staff stated that, because Perkins Water is not located in an Active Management Area
22 ("AMA"), it will not be subject to any AMA reporting and conservation requirements. Staff
23 recommended that Perkins Water file with Docket Control, as a compliance item in this docket,
24 copies of the developer's Letter of Adequate Water Supply for the requested areas within 24 months
25 after the effective date of the order granting this application.

26 15. Rules established by the United States Environmental Protection Agency ("EPA")
27 require that the maximum contaminant level ("MCL") for arsenic in potable water be reduced from
28 50 parts per billion ("ppb") to 10 ppb, effective January 23, 2006. The arsenic levels for Golden

Valley South and The Villages at White Hills developments' well sources are currently unknown. Staff stated that if the arsenic levels exceed the new MCL, lowering the levels will be addressed through the ATC.

16. Staff stated that a Curtailment Plan Tariff ("CPT") is an effective tool to allow a water company to manage resources during periods of water shortages due to pump breakdowns, droughts, or other unforeseeable events. Staff recommended that Perkins Water file with Docket Control, as a compliance item in this docket, for review and approval by the Director of the Utilities Division, a CPT that generally conforms to the sample tariff posted on the Commission's web site or available upon request from Commission Staff, within 30 days of providing service to its first customer.

17. Staff recommended eliminating Perkins Water's proposed hookup fees and stated that normally the Commission allows hookup fees only to companies already holding and operating under a CC&N. Perkins Water's proposed and Staff's recommended rates and charges for initial water service are as follows:

Monthly Customer Charges – Treatment

	<u>Company Proposed</u>	<u>Staff Recommended</u>
3/4" Meter	\$22.00	\$30.00
1" Meter	29.00	40.00
1-1/2" Meter	73.00	100.00
2" Meter	116.00	160.00
3" Meter	218.00	300.00
4" Meter	363.00	500.00
6" Meter	725.00	1,000.00
8" Meter	1,160.00	1,600.00

Gallons included in Monthly Customer Charge

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Commodity Charge – Per 1,000 Gallons of UsageCompany ProposedStaff Recommended

3/4" Meter		
0 to 4,000	\$2.10	\$2.00
4,001 to 20,000	3.15	3.80
20,001 gallons and above	3.78	5.50
1" Meter		
0 to 4,000	2.10	2.00
4,001 to 20,000	3.15	3.80
20,001 gallons and above	3.78	5.50
1-1/2" Meter		
0 to 42,000	3.15	3.80
42,001 gallons and above	3.78	5.50
2" Meter		
0 to 63,000	3.15	3.80
63,001 gallons and above	3.78	5.50
3" Meter		
0 to 120,000	3.15	3.80
120,001 gallons and above	3.78	5.50
4" Meter		
0 to 180,000	3.15	3.80
180,001 gallons and above	3.78	5.50
6" Meter		
0 to 207,000	3.15	3.80
207,001 gallons and above	3.78	5.50
8" Meter		
0 to 235,000	3.15	3.80
235,001 gallons and above	3.78	5.50

Monthly Service Charge for Fire SprinklerCompany ProposedStaff Recommended

4" or Smaller Connection	\$18.15	\$25.00
6" Connection	36.25	50.00
8" Connection	58.00	80.00

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Service Line and Meter Installation ChargesCompany ProposedStaff Recommended

3/4" Meter	\$440.00	\$440.00
1" Meter	500.00	500.00
1-1/2" Meter	715.00	715.00
2" Meter (Turbo)	1,170.00	1,170.00
2" Meter (Compound)	1,700.00	1,700.00
3" Meter (Turbo)	1,585.00	1,585.00
3" Meter (Compound)	2,190.00	2,190.00
4" Meter (Turbo)	2,540.00	2,540.00
4" Meter (Compound)	3,215.00	3,215.00
6" Meter (Turbo)	4,815.00	4,815.00
6" Meter (Compound)	6,270.00	6,270.00
8" Meter (Turbo)	Cost (a)	Cost (a)
8" Meter (Compound)	Cost (a)	Cost (a)

(a) Cost to include parts, labor, overhead, and all applicable taxes, including income taxes.

Service ChargesCompany ProposedStaff Recommended

Establishment	\$30.00	\$30.00
Establishment (After Hours)	50.00	40.00
Re-Establishment (Within 12 Months)	*	*
Reconnection (Delinquent)	40.00	30.00
NSF Check	25.00	25.00
Meter Re-Read (If Correct)	30.00	20.00
Meter Test (If Correct)	30.00	20.00
Deferred Payment	1.5%	1.5%
Late Payment Penalty (Per Month)	1.5%	1.5%
Deposit Interest	**	**
Deposit	**	**
Moving meter/service at customer request	***	***

* Number of months off system times the monthly customer charge for meter size.

** Per Commission Rule R14-2-403.B

*** Cost to include parts, labor, overhead and all applicable taxes

Hookup Fees (CIAC)Company ProposedStaff Recommended

3/4" Meter	\$900.00	\$ --
1" Meter	1,500.00	--
1-1/2" Meter	3,000.00	--
2" Meter	4,800.00	--
3" Meter	9,000.00	--
4" Meter	15,000.00	--
6" Meter	30,000.00	--
8" Meter	48,000.00	--

18. Staff recommended the approval of its rates and charges and that Perkins Water be required to file with Docket Control, as a compliance item in this docket, a tariff consistent with the rates and charges authorized by the Commission within 30 days of the decision in this matter.

19. Staff further recommended that the Commission require Perkins Water to file with Docket Control, as a compliance item in this docket, for review and approval by the Director of the Utilities Division, a backflow prevention tariff within 30 days of the Decision in this matter that generally conforms to the sample tariff found posted on the Commission's web site¹ or available upon request from Commission Staff.

20. Because an allowance for the property tax expense of the Utilities is included in the Company's rates and will be collected from its customers, the Commission seeks assurances from the Company that any taxes collected from ratepayers have been remitted to the appropriate taxing authority. It has come to the Commission's attention that a number of companies have been unwilling or unable to fulfill their obligation to pay the taxes that were collected from ratepayers, some for as many as twenty years. It is reasonable, therefore, that as a preventative measure the Utilities should annually file, as part of its annual report, an affidavit with the Utilities Division attesting that the company is current in paying its property taxes in Arizona.

Staff Recommendations – Wastewater Service CC&N

21. Staff recommends approval of the Perkins Utility's application, subject to the following conditions:

- (a) That the Commission find that the fair value rate base of Perkins Utility's property devoted to wastewater service is \$2,581,198.
- (b) That the Commission approve Staff's rates as shown on Wastewater Schedule REL-5-Rate Design in the Rate Analyst Report attached to the Staff Report. In addition to collection to collection of its regular rates, Perkins Utility may collect from its customers a proportionate share of any privilege, sales or use tax.
- (c) That the Commission require Perkins Utility to file with Docket Control, as a compliance item, a tariff consistent with the rates and charges authorized by the Commission within 30 days of the decision in this matter.
- (d) That the Commission require Perkins Utility to notify the Director of the Utilities Division, through the compliance section, within 15 days of providing service to its first customer.

¹ www.cc.state.az.us/utility

- 1 (e) That the Commission require Perkins Utility to file a rate application
2 no later than six months following the fifth anniversary of the date it
3 begins providing service to its first customer.
- 4 (f) That the Commission require Perkins Utility to maintain its books and
5 records in accordance with the NARUC Uniform System of Accounts
6 for Wastewater Utilities.
- 7 (g) That the Commission require Perkins Utility to use the depreciation
8 rates recommended by Staff.
- 9 (h) That the Commission require Perkins Utility to seek other means of
10 financing that do not include contributions.
- 11 (i) That the Commission require Perkins Utility's charge for minimum
12 deposit be as per A.A.C. R14-2-603(B)(7) and (8).
- 13 (j) That the Commission require Perkins Utility to provide utility services
14 to all of the 440 acres of land that is owned by Sports Entertainment.
- 15 (k) That the Commission require Perkins Utility to file with Docket
16 Control, as a compliance item, an amended legal description for The
17 Village at White Hills CC&N area including the entire 440 acres of
18 land that is owned by Sports Entertainment no later than 15 days after
19 the effective date of the order granting this application.
- 20 (l) That the Commission require Perkins Utility to file with Docket
21 Control, as a compliance item, copies of the ATC for phase 1 of each
22 project when received by the Company, but no later than 24 months
23 after the effective date of the order granting this application.
- 24 (m) That the Commission require Perkins Utility to file with Docket
25 Control, as a compliance item, copies of each project's APP within 24
26 months after the effective date of the order granting this application.
- 27 (n) That the Commission require Perkins Utility to obtain Section 208
28 approval from ADEQ within 24 months from the effective date of the
decision in this matter and file with Docket Control, as a compliance
item, a copy of the Section 208 approval for the requested area within
24 months from the effective date of the decision in this matter.
- 29 (o) That the Commission require Perkins Utility to file with Docket
Control, as a compliance item, a copy of all related franchise
agreements for the requested area within 365 days of the decision in
this matter.

22. Staff further recommends that the Commission's Decision granting the requested
CC&N extension to Perkins Utility be considered null and void should Perkins Utility fail to meet

1 Conditions (c), (k), (l), (m), (n), and (o), above within the time specified.

2 **Staff Recommendations – Water Service CC&N**

3 23. Staff recommends approval of the Perkins Water's application, subject to the
4 following conditions:

5 (a) That the Commission find that the fair value rate base of Perkins
6 Water's property devoted to water service is \$2,406,039.

7 (b) That the Commission approve Staff's rates as shown on Water
8 Schedule REL-5-Rate Design in the Rate Analyst Report attached to
9 the Staff Report. In addition to collection of its regular rates, Perkins
10 Water may collect from its customers a proportionate share of any
11 privilege, sales or use tax.

12 (c) That the Commission require Perkins Water to file with Docket
13 Control, as a compliance item, a tariff consistent with the rates and
14 charges authorized by the Commission within 30 days of the decision
15 in this matter.

16 (d) That the Commission require Perkins Water to notify the Director of
17 the Utilities Division, through the compliance section, within 15 days
18 of providing service to its first customer.

19 (e) That the Commission require Perkins Water to file a rate application
20 no later than six months following the fifth anniversary of the date it
21 begins providing service to its first customer.

22 (f) That the Commission require Perkins Water to maintain its books and
23 records in accordance with the NARUC Uniform System of Accounts
24 for Water Utilities.

25 (g) That the Commission require Perkins Water to use the depreciation
26 rates recommended by Staff.

27 (h) That the Commission require Perkins Water to seek other means of
28 financing that do not include contributions.

(i) That the Commission require Perkins Water's charge for minimum
deposit be as per A.A.C. R14-2-403(B)(7).

(j) That the Commission require Perkins Water to provide utility services
to all of the 440 acres of land that is owned by Sports Entertainment.

(k) That the Commission require Perkins Water to file with Docket
Control, as a compliance item, an amended legal description for The

Village at White Hills CC&N area including the entire 440 acres of land that is owned by Sports Entertainment no later than 15 days after the effective date of the order granting this application.

- (l) That the Commission require Perkins Water to file with Docket Control, as a compliance item, copies of the ATC for phase 1 of each project when received by the Company, but no later than 24 months after the effective date of the order granting this application.
- (m) That the Commission require Perkins Water to file with Docket Control, as a compliance item, copies of the developer's Letter of Adequate Water Supply demonstrating the availability of adequate water for the requested areas within 24 months after the effective date of the order granting this application.
- (n) That the Commission require Perkins Water to file with Docket Control, as a compliance item, for review and approval by the Director of the Utilities Division, a curtailment tariff within 30 days of providing service to its first customer. The tariff shall generally conform to the sample tariff found posted on the Commission's web site² or available upon request from Commission Staff.
- (o) That the Commission require Perkins Water to file with Docket Control, as a compliance item, a copy of all related franchise agreements for the requested area within 365 days of the decision in this matter.
- (p) That the Commission require Perkins Water to file with Docket Control, as a compliance item, a Notice of Filing indicating Perkins Water has submitted for Staff's review and approval, a copy of the fully executed main extension agreements for water facilities for phase 1 of the extension area within 365 days of a decision in this case.
- (q) That the Commission require Perkins Water to file with Docket Control, as a compliance item in this docket, for review and approval by the Director of the Utilities Division, a backflow prevention tariff within 30 days of the Decision in this matter. The tariff shall generally conform to the sample tariff found posted on the Commission's web site or available upon request from Commission Staff.

24. Staff further recommends that the Commission's Decision granting the requested CC&N extension to Perkins Water be considered null and void should Perkins Water fail to meet Conditions (c), (k), (l), (m), (n), (o), (p) and (q), above within the time specified.

² www.cc.state.az.us/utility

Perkins Mountain Water and Utility Companies' Objections to Staff's Report

25. The Utilities objected to Staff's recommendation against the allowance of hookup fees, and stated that this results in an unacceptable 34% increase for the typical residential water and wastewater bill and that it places an additional burden on the ratepayers and shareholders of providing \$7,413,600 in capital for plant. The Utilities cited to Decision No. 68246 (October 25, 2005) to support their argument that hookup fees should be allowed in this instance. In the referenced Decision, Circle City, a certificated and operating company, was authorized to use hookup fees in their rate design. The Utilities drew a comparison between themselves, uncertificated companies not already in operation, and Circle City because Circle City had only 169 customers and total assets of \$128,000, relatively miniscule numbers in comparison with the Utilities' application for CC&N extension to serve 10,000 new customers at an estimated \$55.4 million for plant facilities. The fact remains that even if Circle City were a more recently established company, basic rate-making policy mandates that hookup fees not be allowed for applicants without established plant. The Utilities' comparison to Circle City did not consider that Circle City has been in operation with its CC&N since 1958, making it an unlikely candidate for constructing and then abandoning plant. We agree with Staff's recommendation, and believe it is consistent with other Commission Decisions and sound rate-making policy.

Sports Entertainment

26. Sports Entertainment is a Nevada limited liability company that owns 440 acres in the White Water Hills area of Mohave County (the "Subject Property"). Sagebrush Enterprises, Inc., an affiliate of Rhodes Homes, entered into an Option to Purchase 320 acres of the Subject Property (the "Option Property") in June 2004. Sagebrush Enterprises, Inc. exercised its Option in 2004 and the sale of the Option Property to Sagebrush Enterprises, Inc. is anticipated by Sports Entertainment to close in September 2006. The remaining 120 acres owned by Sports Entertainment (the "SE Property") was not included in the Utilities' applications for CC&N. Sports Entertainment intervened in this docket based on its desire for water and wastewater utility service for the SE Property.

27. The Utilities opposed including the SE Property in the CC&N area, stating that the

1 inclusion of the SE Property is premature because there is no request for service and no indication
2 that Sports Entertainment intends to develop the property in the near future. In fact, the Utilities state
3 in their response to Staff's Report that they "suspect that [Sports Entertainment's] motive to include
4 its property in the [Utilities'] service area is for the purpose of increasing the value of the land, not to
5 request needed service." This latter statement is disingenuous. Based on the record, including
6 documents admitted at hearing and testimony of witnesses, the Utilities and their affiliates, Sagebrush
7 Enterprises and Rhodes Homes, have been involved with Sports Entertainment since the early
8 summer of 2005 regarding a request for service for the SE Property as well as how best to develop
9 the SE Property to complement the Rhodes Homes development of the Option Property. Scott Fisher
10 of Sports Entertainment contracted with Jim Rhodes³ to sell the Option Property to Sagebrush
11 Enterprises, Inc. Mr. Fisher testified that Sports Entertainment contemplated developing the SE
12 Property into an RV park, but Mr. Rhodes suggested this would not be a desirable "gateway" to the
13 Option Property. Mr. Fisher testified that part of the delay in developing the SE Property is that
14 Sports Entertainment is working with Mr. Rhodes to "blend in our development with his
15 development." The record shows that Rhodes Homes sent a letter, dated June 27, 2005, to Sports
16 Entertainment that contained a prepared request for service from Sports Entertainment to the Utilities.
17 Mr. Fisher had questions regarding the June 27, 2005, letter, and sent a letter dated July 7, 2005 to
18 Mr. Kirk Brynjulson, Director and President of Perkins Water and Perkins Utility to that effect. Mr.
19 Fisher testified that he received no response from the Utilities in spite of follow-up calls to both
20 Sagebrush Enterprises, Inc. and the Utilities.

21 28. The Utilities also argued at hearing that the road that bisects the Subject Property,
22 White Hills Road, is problematic for purposes of providing water and wastewater service to the SE
23 Property. The Utilities contended that when the SE Property is "finally ready to develop, or sells to
24 an entity that is, other alternative providers may be available to serve at a lesser cost." The record
25 reflects that Sports Entertainment is ready to develop the SE Property and is waiting to do so out of
26 courtesy to the developer of the Option Property. We conclude that the Utilities will be the closest in
27

28 ³ Jim Rhodes is affiliated with Rhodes Homes, Sagebrush Enterprises and the Utilities.

1 proximity to the SE Property and it is reasonable and in the public interest that they serve the SE
2 Property.

3 **Conclusion**

4 29. Staff's recommendation for approval of the application is reasonable and shall be
5 adopted, subject to compliance with the conditions discussed herein.

6 **CONCLUSIONS OF LAW**

7 1. Perkins Mountain Water Company and Perkins Mountain Utility Company are public
8 service corporations within the meaning of Article XV of the Arizona Constitution and A.R.S. §§ 40-
9 281 and 40-282 *et seq.*

10 2. The Commission has jurisdiction over Perkins Mountain Water Company and Perkins
11 Mountain Utility Company and the subject matter of the applications.

12 3. Notice of the applications was provided in accordance with law.

13 4. There is a public need and necessity for water and wastewater utility service in the
14 proposed service area.

15 5. Perkins Mountain Water Company and Perkins Mountain Utility Company are fit and
16 proper entities to receive water and wastewater CC&Ns to include the service area more fully
17 described in Exhibit A attached hereto, subject to compliance with the conditions set forth above.

18 **ORDER**

19 IT IS THEREFORE ORDERED that the applications of Perkins Mountain Water Company
20 and Perkins Mountain Utility Company for water and wastewater Certificates of Convenience and
21 Necessity, respectively, to include the area described in Exhibit A attached hereto and incorporated
22 herein by reference be, and is hereby approved, subject to the conditions more fully described herein.

23 IT IS FURTHER ORDERED that the fair value rate base of Perkins Mountain Water
24 Company's property devoted to water service is \$2,406,039.

25 IT IS FURTHER ORDERED that the rates as shown on attached Exhibit B are adopted.

26 IT IS FURTHER ORDERED that in addition to collection of its regular rates, Perkins
27 Mountain Water Company may collect from its customers a proportionate share of any privilege,
28 sales or use tax.

1 IT IS FURTHER ORDERED that Perkins Mountain Water Company shall notify the Director
2 of the Utilities Division, through the compliance section, within 15 days of providing service to its
3 first customer.

4 IT IS FURTHER ORDERED that Perkins Mountain Water Company shall file a rate
5 application no later than six months following the fifth anniversary of the date it begins providing
6 service to its first customer.

7 IT IS FURTHER ORDERED that Perkins Mountain Water Company shall maintain its books
8 and records in accordance with the National Association of Regulatory Utility Commissioners'
9 Uniform System of Accounts for Water Utilities.

10 IT IS FURTHER ORDERED that Perkins Mountain Water Company shall use the
11 depreciation rates recommended by Staff.

12 IT IS FURTHER ORDERED that Perkins Mountain Water Company shall seek other means
13 of financing that do not include contributions.

14 IT IS FURTHER ORDERED that Perkins Mountain Water Company's charge for minimum
15 deposit shall be as per A.A.C. R14-2-403(B)(7).

16 IT IS FURTHER ORDERED that Perkins Mountain Water Company shall provide utility
17 services to all of the 440 acres of land that is owned by Sports Entertainment.

18 IT IS FURTHER ORDERED that Perkins Mountain Water Company shall annually file as
19 part of its annual report, an affidavit with the Utilities Division attesting that the Company is current
20 in paying its property taxes in Arizona.

21 IT IS FURTHER ORDERED that this Decision granting the requested CC&N extension to
22 Perkins Mountain Water Company be considered null and void should Perkins Mountain Water
23 Company fail to meet the conditions below for Perkins Mountain Water Company within the time
24 specified.

25 IT IS FURTHER ORDERED that Perkins Mountain Water Company shall file with Docket
26 Control, as a compliance item in this docket, a tariff consistent with the rates and charges authorized
27 by the Commission within 30 days of the decision in this matter.

28 IT IS FURTHER ORDERED that Perkins Mountain Water Company shall file with Docket

Control, as a compliance item in this docket, an amended legal description for The Village at White Hills Certificate of Convenience and Necessity area including the entire 440 acres of land that is owned by Sports Entertainment no later than 15 days after the effective date of the order granting this application.

IT IS FURTHER ORDERED that Perkins Mountain Water Company shall file with Docket Control, as a compliance item in this docket, copies of the Authority to Construct for phase 1 of each project when received by the Company, but no later than 24 months after the effective date of the order granting this application.

IT IS FURTHER ORDERED that Perkins Mountain Water Company shall file with Docket Control, as a compliance item, copies of the developer's Letter of Adequate Water Supply demonstrating the availability of adequate water for the requested areas within 24 months after the effective date of the order granting this application.

IT IS FURTHER ORDERED that Perkins Mountain Water Company shall file with Docket Control, as a compliance item in this docket, for review and approval by the Director of the Utilities Division, a curtailment tariff within 30 days of providing service to its first customer. The tariff shall generally conform to the sample tariff found posted on the Commission's web site or available upon request from Commission Staff.

IT IS FURTHER ORDERED that Perkins Mountain Water Company shall file with Docket Control, as a compliance item in this docket, a copy of all related franchise agreements for the requested area within 365 days of the decision in this matter.

IT IS FURTHER ORDERED that Perkins Mountain Water Company shall file with Docket Control, as a compliance item, a Notice of Filing indicating Perkins Mountain Water Company has submitted for Staff review and approval, a copy of the fully executed main extension agreements for water facilities for phase 1 of the extension area within 365 days of a decision in this case.

IT IS FURTHER ORDERED that Perkins Mountain Water Company shall file with Docket Control, as a compliance item in this docket, for review and approval by the Director of the Utilities Division, a backflow prevention tariff within 30 days of the Decision in this matter. The tariff shall generally conform to the sample tariff found posted on the Commission's web site or available upon

1 request from Commission Staff.

2 IT IS FURTHER ORDERED that Perkins Mountain Utility Company shall annually file as
3 part of its annual report, an affidavit with the Utilities Division attesting that the Company is current
4 in paying its property taxes in Arizona.

5 IT IS FURTHER ORDERED that the fair value rate base of Perkins Mountain Utility
6 Company's property devoted to wastewater service is \$2,581,198.

7 IT IS FURTHER ORDERED that the rates as shown on attached Exhibit C are adopted.

8 IT IS FURTHER ORDERED that in addition to collection to collection of its regular rates,
9 Perkins Mountain Utility Company may collect from its customers a proportionate share of any
10 privilege, sales or use tax.

11 IT IS FURTHER ORDERED that Perkins Mountain Utility Company shall notify the
12 Director of the Utilities Division, through the compliance section, within 15 days of providing service
13 to its first customer.

14 IT IS FURTHER ORDERED that Perkins Mountain Utility Company shall file a rate
15 application no later than six months following the fifth anniversary of the date it begins providing
16 service to its first customer.

17 IT IS FURTHER ORDERED that Perkins Mountain Utility Company shall maintain its books
18 and records in accordance with the National Association of Regulatory Utility Commissioners'
19 Uniform System of Accounts for Wastewater Utilities.

20 IT IS FURTHER ORDERED that Perkins Mountain Utility Company shall use the
21 depreciation rates recommended by Staff.

22 IT IS FURTHER ORDERED that Perkins Mountain Utility Company shall seek other means
23 of financing that do not include contributions.

24 IT IS FURTHER ORDERED that Perkins Mountain Utility Company's charge for minimum
25 deposit shall be as per A.A.C. R14-2-603(B)(7) and (8).

26 IT IS FURTHER ORDERED that Perkins Mountain Utility Company shall provide utility
27 services to all of the 440 acres of land that is owned by Sports Entertainment.

28 IT IS FURTHER ORDERED that this Decision granting the requested Certificate of

1 Convenience and Necessity extension to Perkins Mountain Utility Company be considered null and
2 void should Perkins Mountain Utility Company fail to meet the conditions below for Perkins
3 Mountain Utility Company within the time specified.

4 IT IS FURTHER ORDERED that Perkins Mountain Utility Company shall file with Docket
5 Control, as a compliance item in this docket, a tariff consistent with the rates and charges authorized
6 by the Commission within 30 days of the decision in this matter.

7 IT IS FURTHER ORDERED that Perkins Mountain Utility Company shall file with Docket
8 Control, as a compliance item in this docket, an amended legal description for The Village at White
9 Hills Certificate of Convenience and Necessity area including the entire 440 acres of land that is
10 owned by Sports Entertainment no later than 15 days after the effective date of the order granting this
11 application.

12 IT IS FURTHER ORDERED that Perkins Mountain Utility Company shall file with Docket
13 Control, as a compliance item in this docket, copies of the Authority to Construct for phase 1 of each
14 project when received by the Company, but no later than 24 months after the effective date of the
15 order granting this application.

16 IT IS FURTHER ORDERED that Perkins Mountain Utility Company shall file with Docket
17 Control, as a compliance item in this docket, copies of each project's APP within 24 months after the
18 effective date of the order granting this application.

19 IT IS FURTHER ORDERED that Perkins Mountain Utility Company shall obtain Section
20 208 approval from the Arizona Department of Environmental Quality within 24 months from the
21 effective date of the decision in this matter and file with Docket Control, as a compliance item in this
22 docket, a copy of the Section 208 approval for the requested area within 24 months from the effective
23 date of the decision in this matter.

24 ...

25 ...

26 ...

27 ...

28 ...

1 IT IS FURTHER ORDERED that Perkins Mountain Utility Company shall file with Docket
2 Control, as a compliance item in this docket, a copy of all related franchise agreements for the
3 requested area within 365 days of the decision in this matter.

4 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.
6
7

8 CHAIRMAN

COMMISSIONER

9
10 COMMISSIONER

COMMISSIONER

COMMISSIONER

11
12 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
13 Director of the Arizona Corporation Commission, have
14 hereunto set my hand and caused the official seal of the
15 Commission to be affixed at the Capitol, in the City of Phoenix,
16 this ____ day of _____, 2006.

17
18 BRIAN C. McNEIL
19 EXECUTIVE DIRECTOR

20 DISSENT _____

21 DISSENT _____

22 ABB:mj
23
24
25
26
27
28

1 SERVICE LIST FOR:

Perkins Mountain Utility Company and Perkins
Mountain Water Company

2
3 DOCKET NOS.:

SW-20379A-05-0489 and W-20380A05-0490

4 Deborah R. Scott
5 Kimberly A. Grouse
6 SNELL & WILMER
7 One Arizona Center
8 400 East Van Buren Street
9 Phoenix, AZ 85004

10 Booker T. Evans
11 Kimberly A. Warshawsky
12 GREENSBURG TRAUIG
13 2375 E. Camelback Road, Ste. 700
14 Phoenix, AZ 85016
15 Attorneys for Sports Entertainment, LLC

16 Christopher Kempley, Chief Counsel
17 Legal Division
18 ARIZONA CORPORATION COMMISSION
19 1200 West Washington Street
20 Phoenix, Arizona 85007

21 Ernest Johnson, Director
22 Utilities Division
23 ARIZONA CORPORATION COMMISSION
24 1200 West Washington Street
25 Phoenix, Arizona 85007

GOLDEN VALLEY SOUTH
CC & N BOUNDARY

LEGAL DESCRIPTION

TOWNSHIP 20 NORTH, RANGE 18 WEST, G. & S.R.M., MOHAVE COUNTY, AZ;

SECTION 2, EXCEPT THE W2 NW4 NW4 NE4 NE4, & THE SE4 SE4;
SECTION 3;
SECTION 4;
SECTION 8, EXCEPT THE W2 NW4 NW4 NE4;
SECTION 9;
SECTION 10;
SECTION 11, EXCEPT THE S2 SE4 SE4 SE4;
SECTION 14, EXCEPT THE E2 NE4, THE NE4 SE4, THE E2 W2 SE4 SE4, & THE E2 SE4 SE4;
SECTION 16;

TOWNSHIP 21 NORTH, RANGE 18 WEST, G. & S.R.M., MOHAVE COUNTY, AZ;

SW4 SECTION 34.

THE VILLAGES AT WHITE HILLS
CC & N SEWER/WATER BOUNDARY

LEGAL DESCRIPTION

[Revised 8-3-05]

TOWNSHIP 27 NORTH, RANGE 20 WEST, G. & S.R.M., MOHAVE COUNTY, AZ:

SECTION 16, EXCEPT THE NW4 NE4, & THE E2 NE4;

W2 W2 SECTION 17;

SECTION 20;

SECTION 21, EXCEPT THE SW4, & THE S2 SW4 NW4;

SECTION 23, EXCEPT THE FOLLOWING DESCRIBED PARCEL OF LAND:

COMMENCING AT THE NORTHEAST CORNER OF SECTION 23; THENCE NORTH 89°37'39" WEST, 26.97 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 41°25'03" EAST, 35.78 FEET; THENCE SOUTH 48°34'57" WEST, 599.97 FEET; THENCE NORTH 41°25'03" WEST, 572.03 FEET; THENCE SOUTH 89°37'39" EAST, 804.69 FEET TO THE POINT OF BEGINNING;

ALL OF SECTION 30 LYING SOUTHERLY OF THE CENTERLINE OF WHITE HILLS ROAD (O.R. 274/50-97) OF WHICH THE CENTERLINE IS DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF THE NORTHWEST QUARTER (NW ¼) OF SECTION 30; THENCE SOUTH 00°28'34" WEST, ALONG THE WESTERLY LINE THEREOF, 1,493.03 FEET TO THE POINT OF BEGINNING; THENCE NORTH 68°20'45" EAST, DEPARTING SAID WESTERLY LINE, 223.94 FEET; THENCE NORTH 67°59'58" EAST, 3,686.73 FEET TO THE POINT OF TERMINATION, SAID POINT BEING ON THE NORTHERLY LINE OF THE NORTHEAST QUARTER (NE ¼) OF SECTION 30, EXCEPT THE SW4, & THE SW4 SE4;

TOWNSHIP 27 NORTH, RANGE 21 WEST, G. & S.R.M., MOHAVE COUNTY, AZ:

A PORTION OF THE E2 SECTION 25 DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF THE SOUTHEAST QUARTER (SE ¼) OF SAID SECTION 25; THENCE SOUTH 00°28'58" WEST, ALONG THE EASTERLY LINE THEREOF, 2,643.95 FEET TO THE SOUTHEAST CORNER OF SAID SOUTHEAST QUARTER (SE ¼); THENCE NORTH 89°33'42" WEST, ALONG THE SOUTHERLY LINE THEREOF, 164.23 FEET TO THE POINT OF CURVE OF A NON TANGENT CURVE TO THE LEFT, OF WHICH THE RADIUS POINT LIES SOUTH 74°14'59" WEST, A RADIAL DISTANCE OF 5,821.58 FEET, SAID POINT BEING ON THE EASTERLY RIGHT-OF-WAY LINE OF U.S. HIGHWAY 95; THENCE NORTHERLY ALONG THE ARC, ALONG SAID EASTERLY RIGHT-OF-WAY LINE, THROUGH A CENTRAL ANGLE OF 07°34'58", 770.46 FEET; THENCE NORTH 23°19'59" WEST, CONTINUING ALONG SAID EASTERLY RIGHT-OF-WAY LINE, 2,685.36 FEET TO THE CENTERLINE OF WHITE HILLS ROAD (O.R. 274/50-97); THENCE NORTH 68°20'45" EAST, ALONG SAID CENTERLINE, 1,632.40 FEET TO THE EASTERLY LINE OF THE NORTHEAST QUARTER (NE ¼) OF SAID SECTION 25; THENCE SOUTH 00°28'34" WEST, ALONG SAID EASTERLY LINE, 1,151.09 FEET TO THE POINT OF BEGINNING.

DECISION NO. _____

EXHIBIT A

PARCEL 1a:

SUBJECT TO AND TOGETHER A 100.00 FOOT ROAD RIGHT-OF-WAY, THE CENTERLINE OF WHICH IS DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT S00°28'34"W 1492.90 FEET FROM THE NW CORNER OF SECTION 30, T27N-R20W, GSRB&M. SAID POINT BEING ON THE CENTERLINE OF EXISTING WHITE HILLS ROAD; RUNNING THENCE N68°20'45"E 233.95 FEET; THENCE N68°00'04"E 3886.71 FEET TO A POINT ON THE NORTH LINE OF SAID SECTION; AND THE POINT OF ENDING.

EXHIBIT A

Perkins Mountain Water CompanyMonthly Customer Charges – Treatment

3/4"	Meter	\$30.00
1"	Meter	40.00
1-1/2"	Meter	100.00
2"	Meter	160.00
3"	Meter	300.00
4"	Meter	500.00
6"	Meter	1,000.00
8"	Meter	1,600.00

Gallons included in Monthly Customer Charge 0

Commodity Charge – Per 1,000 Gallons of Usage

3/4"	Meter	
	0 to 4,000	\$2.00
	4,001 to 20,000	3.80
	20,001 gallons and above	5.50
1"	Meter	
	0 to 4,000	2.00
	4,001 to 20,000	3.80
	20,001 gallons and above	5.50
1-1/2"	Meter	
	0 to 42,000	3.80
	42,001 gallons and above	5.50
2"	Meter	
	0 to 63,000	3.80
	63,001 gallons and above	5.50
3"	Meter	
	0 to 120,000	3.80
	120,001 gallons and above	5.50
4"	Meter	
	0 to 180,000	3.80
	180,001 gallons and above	5.50
6"	Meter	
	0 to 207,000	3.80
	207,001 gallons and above	5.50
8"	Meter	
	0 to 235,000	3.80
	235,001 gallons and above	5.50

Monthly Service Charge for Fire Sprinkler

4" or Smaller Connection	\$25.00
6" Connection	50.00
8" Connection	80.00

DECISION NO. _____

Service Line and Meter Installation Charges

3/4" Meter	\$440.00
1" Meter	500.00
1-1/2" Meter	715.00
2" Meter (Turbo)	1,170.00
2" Meter (Compound)	1,700.00
3" Meter (Turbo)	1,585.00
3" Meter (Compound)	2,190.00
4" Meter (Turbo)	2,540.00
4" Meter (Compound)	3,215.00
6" Meter (Turbo)	4,815.00
6" Meter (Compound)	6,270.00
8" Meter (Turbo)	Cost (a)
8" Meter (Compound)	Cost (a)

(a) Cost to include parts, labor, overhead, and all applicable taxes, including income taxes

Service Charges

Establishment	\$30.00
Establishment (After Hours)	40.00
Re-Establishment (Within 12 Months)	*
Reconnection (Delinquent)	30.00
NSF Check	25.00
Meter Re-Read (If Correct)	20.00
Meter Test (If Correct)	20.00
Deferred Payment	1.5%
Late Payment Penalty (Per Month)	1.5%
Deposit Interest	**
Deposit	**
Moving meter/service at customer request	***

* Number of months off system times the monthly customer charge for meter size.

** Per Commission Rule R14-2-403.B

*** Cost to include parts, labor, overhead and all applicable taxes

DECISION NO. _____

Perkins Mountain Utility CompanyMonthly Customer Charges – Treatment

3/4" Meter	\$75.00
1" Meter	88.00
1-1/2" Meter	250.00
2" Meter	400.00
3" Meter	750.00
4" Meter	1,250.00
6" Meter	2,500.00
8" Meter	4,000.00

Service Charges

Establishment (a)	\$30.00
Establishment (After Hours) (a)	40.00
Re-Establishment (Within 12 Months)	*
Reconnection (Delinquent) (a)	30.00
NSF Check (a)	25.00
Deferred Payment	1.5%
Late Payment Penalty (Per Month)	1.5%
Deposit Interest	**
Deposit	**
Moving service at customer request	***

(a) Collected only if customer is not also a water customer

* Number of months off system times the monthly customer charge for meter size

** Per Commission Rule R14-2-603.B

*** Cost to include parts, labor, overhead and all applicable taxes

DECISION NO. _____

COMMISSIONERS
JEFF HATCH-MILLER - Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES



BRIAN C. McNEIL
Executive Director

ARIZONA CORPORATION COMMISSION

DATE: December 16, 2005

DOCKET NO: T-02894A-05-0789

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Amy Bjelland. The recommendation has been filed in the form of an Order on:

PAUL J. PHILLIPS dba PHILMAR COMMUNICATIONS

(CC&N CANCELLATION)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00 p.m.** on or before:

DECEMBER 27, 2005

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

JANUARY 24 AND 25, 2006

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.


BRIAN C. McNEIL
EXECUTIVE DIRECTOR

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 JEFF HATCH-MILLER, Chairman
4 WILLIAM A. MUNDELL
5 MARC SPITZER
6 MIKE GLEASON
7 KRISTIN K. MAYES

8 IN THE MATTER OF THE APPLICATION OF
9 PAUL J. PHILLIPS dba PHILMAR
10 COMMUNICATIONS FOR THE
11 CANCELLATION OF THE CERTIFICATE OF
12 CONVENIENCE AND NECESSITY TO PROVIDE
13 CUSTOMER-OWNED PAY TELEPHONE
14 SERVICE IN THE STATE OF ARIZONA.

DOCKET NO. T-02894A-05-0789

DECISION NO. _____

ORDER

15 Open Meeting
16 January 24 and 25, 2005
17 Phoenix, Arizona

18 **BY THE COMMISSION:**

19 Having considered the entire record herein and being fully advised in the premises, the
20 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

21 **FINDINGS OF FACT**

22 1. Paul J. Phillips dba Philmar Communications ("Applicant") has a Certificate of
23 Convenience and Necessity ("Certificate") to provide customer-owned pay telephone ("COPT")
24 service in the State of Arizona pursuant to Decision No. 59195 (August 8, 1995).

25 2. On October 27, 2005, Applicant filed with the Commission an application for
26 cancellation of its Certificate. Applicant indicated that it no longer provides COPT service in the
27 State of Arizona.

28 3. On December 7, 2005, the Commission's Utilities Division Staff ("Staff") filed a Staff
Report, recommending approval of the application to cancel Applicant's Certificate without a
hearing.

CONCLUSIONS OF LAW

1 Applicant is a public service corporation within the meaning of Article XV of the
Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

2 The Commission has jurisdiction over Applicant and the subject matter of the

1 application.

2 3. The cancellation of Applicant's Certificate is in the public interest.

3 4. Pursuant to A.R.S. § 40-282, the Commission may issue Decisions regarding COPT
4 Certificates without a hearing.

5 5. Staff's recommendation in Findings of Fact No. 3 is reasonable and should be
6 adopted.

7 **ORDER**

8 IT IS THEREFORE ORDERED that the application of Paul J. Phillips dba Philmar
9 Communications for the cancellation of the Certificate of Convenience and Necessity to provide
10 customer-owned pay telephone service shall be, and is hereby, approved.

11 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

12 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

13
14 _____
CHAIRMAN

COMMISSIONER

15
16 _____
COMMISSIONER

COMMISSIONER

COMMISSIONER

17
18 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
19 Director of the Arizona Corporation Commission, have
20 hereunto set my hand and caused the official seal of the
21 Commission to be affixed at the Capitol, in the City of Phoenix,
22 this ____ day of _____, 2006.

23 _____
BRIAN C. McNEIL
EXECUTIVE DIRECTOR

24 DISSENT _____

25
26 DISSENT _____

27 AB:mj

SERVICE LIST FOR:

PAUL FOGGE dba WOD SYSTEMS

DOCKET NO.:

T-02891A-05-0807

Paul J. Phillips

4635 West Port Au Prince Lane

Glendale, AZ 85306

Christopher Kempley, Chief Counsel

Legal Division

ARIZONA CORPORATION COMMISSION

1200 West Washington Street

Phoenix, Arizona 85007

Ernest G. Johnson, Director

Utilities Division

ARIZONA CORPORATION COMMISSION

1200 West Washington Street

Phoenix, Arizona 85007

COMMISSIONERS
JEFF HATCH-MILLER - Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES



BRIAN C. McNEIL
Executive Director

ARIZONA CORPORATION COMMISSION

DATE: September 21, 2005

DOCKET NO: W-01376A-04-0463 and W-01676A-04-0500

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Amy Bjelland. The recommendation has been filed in the form of an Order on:

PINEVIEW WATER COMPANY, INC.
(AMEND DECISION NO. 67989)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00 p.m.** on or before:

SEPTEMBER 28, 2005

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

TO BE DETERMINED

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.


BRIAN C. McNEIL
EXECUTIVE DIRECTOR

1
2 **BEFORE THE ARIZONA CORPORATION COMMISSION**

3 COMMISSIONERS

4 JEFF HATCH-MILLER, Chairman
5 WILLIAM A. MUNDELL
6 MARC SPITZER
7 MIKE GLEASON
8 KRISTIN K. MAYES

9 IN THE MATTER OF THE APPLICATION OF
10 PINEVIEW WATER COMPANY, INC. FOR
11 AUTHORITY TO ISSUE PROMISSORY NOTE(S)
12 AND OTHER EVIDENCE OF INDEBTEDNESS
13 PAYABLE AT PERIODS OF MORE THAN
14 TWELVE MONTHS AFTER THE DATE OF
15 ISSUANCE.

DOCKET NO. W-01376A-04-0463

16 IN THE MATTER OF THE APPLICATION OF
17 PINEVIEW WATER COMPANY, INC. FOR AN
18 INCREASE IN ITS WATER RATES FOR
19 CUSTOMERS WITHIN NAVAJO COUNTY,
20 ARIZONA.

DOCKET NO. W-01676A-04-0500

DECISION NO. _____

ORDER AMENDING DECISION NO.
67989

21 Open Meeting

22 Phoenix, Arizona

23 **BY THE COMMISSION:**

24 Having considered the entire record herein and being fully advised in the premises, the
25 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

26 **FINDINGS OF FACT**

27 1. On June 18, 2004, Pineview Water Company, Inc. ("Pineview") filed the above-
28 captioned application with the Arizona Corporation Commission ("Commission") for authority to
issue promissory note(s) and other evidences of indebtedness payable at periods of more than twelve
months after the date of issuance not to exceed \$730,978.

2. On July 9, 2004, Pineview filed the above-captioned rate application with the
Commission.

3. The matters were consolidated on January 12, 2005. A hearing was held on the
consolidated applications on February 24 and 25, and March 3, 2005.

1 4. On July 18, 2005, the Commission issued Decision No. 67989 in the consolidated
2 dockets. Among other things, the Decision authorized Pineview to issue up to \$577,578 in long
3 term debt from the Arizona Water Infrastructure Financing Authority ("WIFA") on the terms
4 proposed by Pineview, for a term not to exceed twenty years and at an interest rate not to exceed
5 4.20 percent, for the purposes of funding capital projects as described in Findings of Fact No. 38 of
6 the Decision.

7 5. Pineview filed exceptions to the Recommended Opinion and Order in this proceeding,
8 but did not take exception to the fact that the Recommended Opinion and Order granted the interest
9 rate the Company requested.

10 6. On August 25, 2005, Pineview filed a Motion for an Order Nunc Pro Tunc
11 ("Motion"). Pineview states in the Motion that the applicable WIFA interest rate is no longer 4.20
12 percent, but is now instead 6.20 percent, and requested the issuance of an Order Nunc Pro Tunc to
13 change the authorized interest rate on the financing approved in Decision No. 67989.

14 7. On September 15, 2005, Staff filed a Response to the Motion, objecting to the
15 issuance of an Order Nunc Pro Tunc on the grounds that Pineview's request constituted more than
16 the correction of a typographical or stenographical error.

17 8. On September 9, 2005, Pineview filed a Motion to Amend, Withdrawal of Request for
18 an Order Nunc Pro Tunc, and Request for Expedited Processing ("Second Motion"). The Second
19 Motion states that WIFA advised Pineview that funds currently available cannot be obtained within
20 the interest rate authorization set forth in Decision 67989; WIFA advised Pineview that the interest
21 rate is currently, and typically has been, at the Prime Rate plus 2 percent. Pineview states that the
22 interest rate formula now requires a 6.38 percent interest rate. Pineview asserts that the increase in
23 the interest rate will not substantially or adversely impact its cash flows, its ability to perform under
24 the loan, or its ability to fulfill its public service obligations.

25 9. The financing authorization granted in Decision No. 67989 was based on the financial
26 analysis of the Commission's Utilities Division Staff ("Staff"). Staff's recommendation was that the
27 requested financing be approved "on the terms and conditions consistent with or better than those
28 used in Staff's pro forma analysis" (Exh. S-2, Direct Testimony of J.H. Johnson, at 2). Staff's pro

1 forma analysis was based on an interest rate of 5.60 percent (Exh. S-12, Exhibit A Memorandum at
2 2).

3 10. On September 15, 2005, Staff filed a Staff Report recommending approval of
4 Pineview's request to amend Decision No. 67989.

5 11. On September 19, 2005, Staff filed an amendment to its Staff Report.

6 12. The Debt Service Coverage ("DSC") ratio represents the number of times internally
7 generated cash will cover required principal and interest payments on long-term debt. A DSC ratio
8 greater than 1.0 means that operating cash flow is sufficient to cover debt obligations. A DSC less
9 than 1.0 means that debt service obligations cannot be met from operations and that another source
10 of funds is needed to avoid default.

11 13. The Times Interest Earned Ratio ("TIER") represents the number of times earnings
12 will cover interest expense on short-term and long-term debt. A TIER greater than 1.0 means that
13 operating income is greater than interest expense. A TIER of less than 1.0 is not sustainable in the
14 long term but does not necessarily mean that debt obligations cannot be met in the short term.

15 14. Staff's recalculation of Pineview's pro forma TIER and DSC using Pineview's
16 interest rate of 6.38 percent as proposed in the Second Motion shows a pro forma TIER of 1.05 and
17 a revised pro forma DSC of 1.97. Based on its analysis, Staff determined that the revenues approved
18 in Decision No. 67989 are sufficient to cover the \$577,578 WIFA loan at an interest rate of 6.38
19 percent.

20 15. Based on its review and analysis, Staff concluded that issuance of debt in the amount
21 of \$577,578 at an interest rate of 6.38 percent is within Pineview's corporate powers, compatible
22 with the public interest, compatible with sound financial practices, and will not impair its ability to
23 perform service.

24 16. Staff recommends granting Pineview's request to authorize an interest rate of 6.38
25 percent instead of the 5.20 percent authorized in Decision No. 67989, on the financing approved in
26 that Decision.

27 17. Staff's recommendations are reasonable and in the public interest and should be
28 adopted.

18. Aside from the change in the authorized interest rate, the financing authorizations approved in Decision No. 67989, the associated filing requirements, and all other Findings of Fact and Conclusions of Law set forth in Decision No. 67989, should remain otherwise unchanged.

CONCLUSIONS OF LAW

1. Pineview is a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

2. The Commission has jurisdiction over Pineview and the subject matter of the application.

3. It is in the public interest to amend Decision No. 67989 for the sole purpose of authorizing WIFA's current interest rate of 6.38 percent in place of the 5.20 percent interest rate requested in the financing application.

4. The amendment approved herein does not change the findings of Decision No. 67989 that the financing approved therein is for lawful purposes within Pineview's corporate powers, is compatible with the public interest, with sound financial practices and with the proper performance by Pineview as a public service corporation, and will not impair Pineview's ability to perform that service.

5. The amendment to Decision No. 67989 approved herein does not change the findings of Decision No. 67989 that the financing approved therein is for the purposes of funding capital projects as described in Findings of Fact No. 38 of Decision No. 67989, is reasonably necessary for those purposes, and such purposes are not wholly or in part reasonably chargeable to operating expenses or to income.

ORDER

IT IS THEREFORE ORDERED that Decision No. 67989 (July 18, 2005) shall be, and is hereby amended to change the interest rate authorized on the financing approved in Decision No. 67989 from 5.20 percent to not greater than 6.38 percent.

...

...

...

1 IT IS FURTHER ORDERED that the financing authorizations approved in Decision No.
2 67989, the associated filing requirements, and all other Findings of Fact, Conclusions of Law, and
3 ordering paragraphs set forth in Decision No. 67989, shall remain otherwise unchanged.

4 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.
6
7

8 CHAIRMAN

COMMISSIONER

10
11 COMMISSIONER

COMMISSIONER

COMMISSIONER

12 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
13 Director of the Arizona Corporation Commission, have
14 hereunto set my hand and caused the official seal of the
15 Commission to be affixed at the Capitol, in the City of Phoenix,
16 this ____ day of _____, 2005.

17 BRIAN C. McNEIL
EXECUTIVE DIRECTOR

18 DISSENT _____
19

20
21 DISSENT _____
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26
27
28

1 SERVICE LIST FOR: PINEVIEW WATER COMPANY, INC.
2 DOCKET NO.: W-01676A-04-0463 and W-01676A-04-0500
3 Richard L. Sallquist
4 SALLQUIST & DRUMMOND
5 2525 E. Arizona Biltmore Circle, Ste. 117
6 Phoenix, AZ 85016
7 Attorneys for Pineview Water Company
8 Dan E. Simpson
9 1021 White Tail Drive
10 Show Low, AZ 85901
11 Thomas R. Cooper
12 8578 N. Ventura Avenue
13 Ventura, California 93001
14 Christopher Kempley
15 Chief Counsel, Legal Division
16 Timothy Sabo
17 Diane Targovnik
18 Attorneys, Legal Division
19 ARIZONA CORPORATION COMMISSION
20 1200 W. Washington Street
21 Phoenix, Arizona 85007
22 Ernest Johnson
23 Director, Utilities Division
24 ARIZONA CORPORATION COMMISSION
25 1200 W. Washington Street
26 Phoenix, Arizona 85007
27
28

COMMISSIONERS
JEFF HATCH-MILLER - Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES



BRIAN C. McNEIL
Executive Director

ARIZONA CORPORATION COMMISSION

DATE: April 13, 2006

DOCKET NOS: T-01051B-05-0495 and T-03693A-05-0495

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Amy Bjelland. The recommendation has been filed in the form of an Opinion and Order on:

PAC-WEST TELECOMM, INC. v. QWEST CORPORATION

(COMPLAINT)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00 p.m.** on or before:

APRIL 24, 2006

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

MAY 2 AND 3, 2006

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.


BRIAN C. McNEIL
EXECUTIVE DIRECTOR

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 JEFF HATCH-MILLER, Chairman
4 WILLIAM A. MUNDELL
5 MARC SPITZER
6 MIKE GLEASON
7 KRISTIN K. MAYES

8 IN THE MATTER OF

9 PAC-WEST TELECOMM, INC.,

10 Complainant,

11 vs.

12 QWEST CORPORATION,

13 Respondent.

DOCKET NO. T-01051B-05-0495
DOCKET NO. T-03693A-05-0495

DECISION NO. _____

OPINION AND ORDER

14 DATE OF HEARING:

October 24, 2005 (oral argument only)

15 PLACE OF HEARING:

Phoenix, Arizona

16 ADMINISTRATIVE LAW JUDGE:

Jane Rodda¹

17 APPEARANCES:

Joan S. Burke, OSBORN MALEDON, on behalf
of Pac-West Telecomm; and

Norman G. Curtright, Corporate Counsel, on
behalf of Qwest Corporation.

18 **BY THE COMMISSION:**

19 On July 13, 2005, Pac-West Telecomm, Inc. ("Pac-West") filed with the Arizona Corporation
20 Commission ("Commission") a Formal Complaint Regarding Enforcement of an Interconnection
21 Agreement against Qwest Corporation ("Qwest") alleging that Qwest has failed to comply with
22 certain terms of the parties' interconnection agreement.

23 On July 15, 2005, Qwest was notified by the Commission's Docket Control of the formal
24 complaint docketed by Pac-West.

25 On August 16, 2005, Pac-West and Qwest filed a Joint Stipulation for Extension to File
26 Answer and for Briefing Schedule with a suggested briefing schedule.

27 _____
28 ¹ Administrative Law Judge Jane Rodda conducted the hearing in this proceeding and Administrative Law Judge Amy
Bjelland drafted the Recommended Opinion and Order.

1 On August 22, 2005, Qwest filed its Answer to Pac-West's Complaint to Enforce its
2 Interconnection Agreement and Counterclaims.

3 On September 13, 2005, a Procedural Order was issued in this docket setting forth a briefing
4 schedule and a time for oral argument.

5 On September 14, 2005, Pac-West and Qwest each filed a simultaneous Opening Brief in this
6 docket.

7 On October 5, 2005, the parties filed a Joint Stipulation Regarding Briefing Schedule
8 requesting an extension of time for filing simultaneous response briefs.

9 On October 14, 2005, a Procedural Order was issued in this docket extending the deadline for
10 filing response briefs and retaining the date for oral argument.

11 On October 19, 2005, the parties each filed a simultaneous Response Brief in this docket.

12 A hearing for the purpose of oral argument convened on October 24, 2005, before a duly
13 authorized Administrative Law Judge of the Commission. Each party appeared with counsel and
14 agreed that a recommended order should be issued based on the legal issues raised and argued in the
15 docket and at oral argument. At the conclusion of the hearing, the matter was taken under
16 advisement pending issuance of a recommended opinion and order.

17 On December 7, 2005, Qwest filed a Notice of Filing Supplemental Authority.

18 On December 20, 2005, Qwest filed a Notice of Second Filing of Supplemental Authority.

19 On January 9, 2006, Pac-West filed a Response to Qwest's Supplemental Citations of
20 Authority.

21 On January 17, 2006, Qwest filed a Reply to Pac-West's Response to Qwest's Supplemental
22 Citations of Authority.

23 On January 23, 2006, Qwest filed its Notice of Third Filing of Supplemental Authority.

24 On February 1, 2006, Qwest filed its Notice of Fourth Filing of Supplemental Authority.

25 On February 3, 2006, Qwest filed its Notice of Fifth Filing of Supplemental Authority.

26 On February 13, 2006, Pac-West filed its Notice of Filing of Supplemental Authority.

27 On February 16, 2006, Fennemore Craig, attorneys for Qwest, filed a Notice of Withdrawal,
28 stating that Qwest has been advised of and consented to the withdrawal, and that pleadings in the

1 matter previously sent to Fennemore Craig should be directed to Norman Curtright. Substitution of
2 counsel was approved by procedural order on February 23, 2006.

3 On March 10, 2006, Pac-West filed its Second Citation of Supplemental Authority.

4 On March 28, 2006, Qwest filed its Notice of Sixth Filing of Supplemental Authority.

5 On April 5, 2006, Pac-West filed its Third Citation of Supplemental Authority.

6 On April 12, 2006, Qwest filed its Notice of Seventh Filing of Supplemental Authorities.

7 * * * * *

8 Having considered the entire record herein and being fully advised in the premises, the
9 Commission finds, concludes, and orders that:

10 **FINDINGS OF FACT**

11 1. Pac-West is a public service corporation and competitive local exchange company
12 ("CLEC") that is certified to provide competitive telecommunications services in Arizona. Pac-West
13 is authorized to provide switched and non-switched local exchange and long distance service in
14 Arizona.

15 2. Qwest is an incumbent local exchange company ("ILEC"), as defined in 47 U.S.C. §
16 251(h), that provides local exchange and other telecommunications services throughout Arizona.

17 3. Pac-West and Qwest are parties to a Local Interconnection Agreement
18 ("Interconnection Agreement" or "ICA"), approved by the Commission in Decision No. 62137
19 (December 14, 1999).

20 4. On April 27, 2001, the FCC released its Order on Remand and Report and Order *In*
21 *the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of*
22 *1996 and Intercarrier Compensation for ISP-Bound Traffic*, CC Docket Nos. 96-98 & 99-68, FCC
23 01-131 ("ISP Remand Order"). The ISP Remand Order held that, through §251(g) of the
24 Telecommunications Act of 1996 (the "Act"), Congress intended to exclude ISP-bound traffic from
25 the reach of §251(b)(5). ISP Remand Order ¶1. Thus, the FCC found that ISP-bound traffic is not
26 subject to reciprocal compensation under § 251(b)(5). *Id.* ¶35. The FCC reaffirmed that ISP traffic is
27 predominantly interstate access traffic subject to Section 201 of the Act and on an interim basis
28 established rates for the exchange of such traffic, as well as set growth caps.

1 5. On May 24, 2002, Pac-West and Qwest entered into an amendment ("ISP
2 Amendment") to their Interconnection Agreement, which was filed with the Commission and became
3 effective by operation of law pursuant to § 252(e)(4) of the Act on May 19, 2003. The ISP
4 Amendment provides that each party presumes that traffic delivered to the other party that exceeds a
5 3:1 ratio of terminating to originating traffic is ISP-bound. The parties agree that Pac-West
6 terminates more calls for Qwest than Qwest terminates for Pac-West.

7 6. Sections 1.4 and 3.1 of the ISP Amendment provide that " 'ISP Bound' [traffic] is as
8 described by the FCC in [the ISP Remand Order]," and that "Qwest elects to exchange ISP-bound
9 traffic at the FCC ordered rates pursuant to the [ISP Remand Order]." Section 5 of the ISP
10 Amendment provides "the reciprocal compensation rate elected for (§251(b)(5)) traffic is the rate
11 applied to ISP traffic." The ISP Amendment also provided for a cap on minutes for which
12 compensation is required for the years 2001, 2002, and 2003.

13 7. Due to a dispute regarding whether Qwest was obligated to compensate Pac-West for
14 minutes over the growth caps after December 31, 2003, Pac-West and Qwest entered into private
15 arbitration as provided for in the dispute resolution provision of their ICA. While the Pac-
16 West/Qwest arbitration was pending, the FCC issued its Core Order.²

17 8. In an arbitration decision dated December 2, 2004, the Pac-West/Qwest arbitrator
18 found that the ISP Remand Order discontinued the minutes cap after December 31, 2003. The Pac-
19 West/Qwest arbitrator further found that, rather than changing the law established by the ISP Remand
20 Order, the Core Order clarified the FCC's intent to discontinue the minutes cap after 2003. Based on
21 these findings, the Pac-West/Qwest arbitrator ordered that Pac-West was entitled to compensation for
22 all ISP-bound traffic, without application of the growth caps, beginning on January 1, 2004.

23 9. Subsequent to the Pac-West/Qwest arbitration decision, Qwest notified Pac-West on
24 December 29, 2004, that it would withhold reciprocal compensation for Virtual NXX ("VNXX")
25 traffic retroactive to the beginning of 2004. Pac-West offers VNXX service by assigning an NPA-
26 NXX to an ISP customer physically located outside the rate center to which the NPA-NXX is

27 _____
28 ² *Petition of Core Communications, Inc. for Forbearance Under 47 U.S.C. § 160(c) from application of the ISP Remand Order*, WC Docket 03-171, FCC Release No. 04-241 (October 18, 2004).

1 assigned. The North American Numbering Plan provides for telephone numbers consisting of a three
2 digit area code (Number Plan Area or "NPA"), a three digit prefix ("NXX") and a four digit line
3 number. As the Commission noted in Decision No. 66888 (April 6, 2004) ("AT&T Arbitration"):

4 NXX calls are assigned to particular central offices or rate centers within
5 the state and are associated with specific geographic areas or exchanges.
6 The definition is important for determining whether a call will be routed
7 and rated as a local call, and subject to reciprocal compensation, or as a
8 toll call subject to access charges....Qwest offers an FX service, under
9 which for a monthly fee, Qwest provides customers in one rate center with
10 a NPA-NXX assigned to another rate center, so that calls can be placed to
and from the FX subscriber to and from customers in the foreign rate
center without incurring toll charges....Both FX service and VNXX
services have the effect of expanding the local calling area for the
customer.

11 AT&T Arbitration, pp. 7-8.

12 **Reciprocal Compensation Under the ISP Amendment**

13 **Pac-West Position**

14 10. Pac-West argues that Qwest breached its obligation under the ICA and ISP
15 Amendment by refusing to compensate Pac-West for all ISP-bound traffic, including VNXX traffic
16 originated by Qwest customers and terminated by Pac-West via Pac-West's VNXX service. Pac-
17 West alleges that Qwest has withheld \$443,784.34 in compensation owed Pac-West for local
18 exchange traffic terminated between January 1, 2004 and May 31, 2005.

19 11. Pac-West states that, in a practical sense, VNXX is indistinguishable from FX service
20 and that therefore it is eligible for reciprocal compensation under the ISP Amendment. Pac-West
21 further contends that, pursuant to *WorldCom, Inc. v. FCC*, 288 F. 3d 429 (U.S.App.D.C. 2002), ISP-
22 bound traffic is not §251(g) traffic, or toll traffic, and therefore all ISP-bound traffic, including
23 VNXX, is subject to reciprocal compensation pursuant to §251(b)(5).

24 12. Pac-West distinguishes the AT&T Arbitration, which excluded VNXX traffic from the
25 definition of "Exchange Service" for an ICA between AT&T and Qwest, from the instant matter in
26 three ways. First, the AT&T Arbitration decided prospective language for an ICA; second, the
27 parties in that matter disputed and sought clarification for the term "Exchange Service" with regard to
28 VNXX traffic and not to intercarrier compensation; and third, the Decision indicated the

Commission's reluctance to decide in that matter "a future dispute concerning AT&T's VNXX service which may or may not arise under that provision." AT&T Arbitration at 13.

13. Pac-West requests that the Commission order Qwest to comply with the ICA with regard to the reciprocal compensation allegedly owed Pac-West for the transport and termination of all local traffic, including ISP-bound traffic and all VNXX traffic originated by Qwest. Pac-West requests that Qwest be ordered to make the payment owed to Pac-West, as well as interest for all overdue payments at the interest rate specified in the ICA.

Qwest's Position

14. Qwest argues that it has not breached its obligation under the ICA and ISP Amendment because VNXX traffic is not included in ISP-bound traffic for purposes of reciprocal compensation. Qwest states that routing ISP-bound calls to a server that is not physically located in the same local calling area ("LCA") is contrary to the regulatory scheme set forth in the ISP Remand Order, as well as contrary to well-established telecommunications jurisprudence. Qwest contends that VNXX traffic is not local exchange traffic and is therefore not eligible for reciprocal compensation under the ICA and ISP Amendment. Qwest denies Pac-West's allegation regarding the amount of money at issue and states that the maximum amount owed for the period from January 1, 2004 through May 31, 2005 is \$436,854.34.

15. Qwest states that VNXX traffic is distinguishable from FX service because FX customers must purchase a local connection, pay for transport from the central office to their location, and because of the extreme disparity in the volume of traffic. Qwest's Opening Brief, pp. 30-31. Qwest specifies that VNXX traffic is not local traffic, and cites the Enhanced Service Provider ("ESP") Exemption to support its contention. Qwest argues that the ESP Exemption was a policy decision made by the FCC before the Act, wherein ESPs, or providers of communication that modifies content, were authorized to connect their points of presence through local service tariffs, even though the services provided were interstate in nature. Qwest states that based on the Act, "[t]he FCC determined that ISPs, the heirs to the old "enhanced service provider" designation, were entitled to the same treatment [as ESPs] for compensation purposes. Thus, when an ISP is served by a CLEC, the same analysis applies under Section 251(g) of the Act." Qwest Answer, ¶21.

1 16. Qwest provided numerous supplements in this docket which included decisions from
2 other states purporting to support its argument against inclusion of VNXX within the definition of
3 ISP-bound traffic and cites the AT&T Arbitration in arguing that VNXX does not fall under the
4 definition of local traffic. In that matter, we adopted Qwest's proposed definition of "Exchange
5 Service", which did not specifically include VNXX traffic.

6 17. Qwest requests that the Commission deny all relief requested by Pac-West in its
7 Complaint.

8 **Resolution**

9 18. The crux of the dispute is whether VNXX ISP-bound traffic is eligible for reciprocal
10 compensation under the ICA, the ISP Amendment and the ISP Remand Order. The ICA and its
11 amendments only authorize certain categories of traffic (e.g., Extended Area Service ("EAS")/Local
12 Traffic, Transit Traffic, Switched Access Traffic, Ancillary Traffic). The ICA and ISP Amendment
13 make no reference to VNXX. The precise classification of VNXX traffic remains unsettled. Current
14 jurisprudence at the federal level is inconclusive, and state jurisprudence is conflicting.

15 19. We agree with Qwest that FX and VNXX services are distinct. However, this
16 difference does not mean that VNXX traffic is ineligible to receive reciprocal compensation pursuant
17 to the ICA and ISP Amendment.

18 20. The *WorldCom* court reviewed the FCC's ISP Remand Order and explicitly rejected
19 the proposition that §251(g) carved out ISP-bound traffic from §251(b)(5) traffic, however the Court
20 did not vacate the Order as it found that the FCC could have arrived at the same result under different
21 reasoning. We do not read the ISP Remand Order as being limited to ISPs with a server located in
22 the same local calling area as its customers. Nor do we believe that the ESP Exemption relied upon
23 by Qwest precludes the use of VNXX arrangements.

24 21. The ISP Amendment provides in Section 2 that "Pursuant to the election in Section 5
25 of this Amendment, the Parties agree to exchange all EAS/Local (§251(b)(5)) traffic at the state
26 ordered reciprocal compensation rate." Section 5 provides "The reciprocal compensation rate elected
27 for (§251(b)(5)) traffic is...[t]he rate applied to ISP traffic." The plain language of the ISP
28 Amendment provides for reciprocal compensation for all ISP-bound traffic. Because it does not

1 exclude VNXX ISP-bound traffic, we find that such traffic should be subject to reciprocal
2 compensation under the terms of the ICA and ISP Amendment.

3 22. The AT&T Arbitration prospectively dealt with the establishment of language to be
4 included in an ICA between the parties, specifically with the definition of "Exchange Service", rather
5 than how to deal with intercarrier compensation. Most importantly, we acknowledged in that
6 Decision our unwillingness to determine a matter of such gravity without broad industry participation
7 and the participation of Staff. In this matter, again, we are disinclined to make a sweeping
8 pronouncement regarding the appropriateness of VNXX as it relates to intercarrier compensation.
9 We base our decision in this matter on the plain language of the specific contract terms.

10 23. For the foregoing reasons, we find that by withholding reciprocal compensation for
11 VNXX ISP-bound traffic, Qwest has breached the terms of the ICA and ISP Amendment.

12 24. VNXX allows carriers to effectively extend the local calling areas established by the
13 Commission. It is a departure from the historic means of routing and rating calls and has broad
14 implications for intercarrier compensation. Because the issue of VNXX has now come before the
15 Commission more than once, and we anticipate that it will continue to be an issue in the future, we
16 will order Staff to open a generic docket to investigate and make recommendations on whether, or
17 under what circumstances, the use of VNXX is in the public interest. Our finding in the matter
18 before us is premised on the language of the ICA and ISP Amendment and the holding in the ISP
19 Remand Order, and makes no findings concerning the appropriateness of VNXX arrangements on a
20 going-forward basis.

21 **Course of Dealing/Estoppel, Res Judicata, Discrimination**

22 25. Pac-West raised claims that the doctrines of "course of dealing"/estoppel and res
23 judicata preclude Qwest from raising objections to the use of VNXX, and that Qwest's opposition to
24 assigning phone numbers to allow VNXX arrangements is discriminatory. Given our resolution of
25 Pac-West's claim based on the plain meaning of the ICA and ISP Amendment, we do not reach these
26 issues.

27 ...

28 ...

1 **Qwest's Counterclaims**2 **Qwest's Position**

3 26. Qwest made several counterclaims based on allegations that Pac-West violated
4 federal and state law, as well as the ICA.

5 27. Qwest contends that Pac-West has misassigned local telephone numbers and
6 NPA/NXXs in local calling areas other than the local calling area where its customer's ISP server is
7 physically located, misused telephone numbering resources and subsequently attempted to bill Qwest
8 the ISP Remand Order rate for VNXX traffic, all in violation of federal law. Qwest Answer ¶60.
9 Qwest asks the Commission to order Pac-West to cease assigning NPA/NXXs in local calling areas
10 other than the local calling area where its customer's ISP servicer is physically located, and cease
11 charging Qwest for such traffic, and further to require Pac-West to properly assign telephone
12 numbers based on the physical location of its end-user or ISP customer. *Id.*

13 28. Qwest contends that Pac-West has knowingly misassigned local telephone numbers to
14 ISP servers that are physically located outside of the local area to which the telephone number is
15 assigned in violation of Section 2.1.4.6.8 of Attachment 5 to the ICA. Qwest Answer ¶66. Section
16 2.1.4.6.8 of Attachment 5 to the ICA provides that "[e]ach Party is responsible for administering
17 NXX codes assigned to it...Each party shall use the [Local Exchange Routing Guide ("LERG")]
18 published by Bellcore or its successor for obtaining routing information and shall provide all required
19 information to Bellcore for maintaining the LERG in a timely manner."

20 29. Qwest argues that Pac-West is violating the ICA by attempting to obligate Qwest to
21 send non-local ISP traffic over LIS trunks because the Single Point of Presence ("SPOP")
22 Amendment³ between the parties authorizes them to exchange only certain categories of traffic over
23 LIS trunks. Qwest Answer ¶70. Qwest contends that VNXX traffic is not within one of these
24 authorized categories. *Id.*

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27 _____
28 ³ Pac-West and Qwest entered into the SPOP Amendment in 2001. The amendment was approved by Decision No. 63736 (June 6, 2001).

1 **Pac-West's Position**

2 30. Pac-West argues that there is no law that prohibits a carrier from assigning a telephone
3 number associated with one local calling area to a customer who is physically located in a different
4 local calling area, and states that if this were so, Qwest itself would be in violation. Pac-West
5 Opening Brief ¶¶ 1-2. Pac-West further made an "unclean hands" argument that Qwest seeks
6 compensation from Pac-West for calls made to customers using Qwest's FX service and features,
7 including ISPs. *Id.* Pac-West argues that any alleged federal violation is within the exclusive
8 jurisdiction of the FCC and not the Commission. *Id.* Pac-West further argues that the appropriate
9 venues to raise the issue of how a carrier assigns telephone numbers to its customers would be with
10 the North American Numbering Council, the North American Numbering Plan Administrator, or
11 another body with responsibility for national numbering issues. *Id.*

12 31. Pac-West argues that it has not violated Section 2.1.4.6 of Attachment 5 of the ICA.
13 Pac-West states that Section 2.1.4.6 cannot reasonably be construed to create an independent contract
14 obligation with respect to how a party obtains or uses telephone numbers. Pac-West Opening Brief
15 ¶4. Even if there were such a contractual duty (which Pac-West asserts there is not), Pac-West states
16 that it has not violated such obligation. *Id.* Pac-West quotes Section 2.14 of the Central Office Code
17 (NXX) Assignment Guidelines ("COAG"), which states "from a wireline perspective that [central
18 office] codes/blocks allocated to a wireline service provider are to be utilized to provide service to a
19 customer's premise physically located in the same rate center that the [central office] codes/blocks
20 are assigned. Exceptions exist, for example tariffed services such as foreign exchange service."

21 32. Pac-West contends that FX ISP-bound traffic is included within the definition of
22 EAS/Local Traffic, and is covered by the ISP Amendment to the ICA, and therefore Pac-West is not
23 improperly routing traffic over LIS trunks. Pac-West Opening Brief ¶4. The ICA defined toll traffic
24 as "traffic that originates in one Rate Center and terminates in another Rate Center with the exception
25 of traffic that is rated as EAS, and defines EAS as "intraLATA traffic treated as 'local' traffic
26 between exchanges (rather than as 'toll' traffic) as established by the Commission and as reflected in
27 the effective US West tariffs."
28

1 **Resolution**

2 33. Our resolution of the dispute addresses Qwest's counterclaims. The generic docket
3 will determine whether VNXX is in the public interest.

4 **CONCLUSIONS OF LAW**

5 1. Pac-West and Qwest are public service corporations within the meaning of Article XV
6 of the Arizona Constitution.

7 2. Pac-West and Qwest are telecommunications carriers within the meaning of 47 U.S.C.
8 §§ 251 and 252.

9 3. The Commission has jurisdiction over Pac-West and Qwest and the subject matter of
10 the Complaint pursuant to 47 U.S.C. §§ 251 and 252 and A.A.C. R14-3-106.

11 4. The Commission's resolution of the issues pending herein is just and reasonable,
12 meets the requirements of the Act and regulations prescribed by the FCC pursuant to the Act, and is
13 in the public interest.

14 **ORDER**

15 IT IS THEREFORE ORDERED that Qwest Corporation shall compensate Pac-West
16 Telecomm, Inc. for ISP-bound traffic consistent with this Decision.

17 IT IS FURTHER ORDERED that Pac-West Telecomm, Inc.'s claims of discriminatory
18 application and res judicata shall be dismissed.

19 IT IS FURTHER ORDERED that Qwest Corporation's counterclaims of violations of federal
20 and state law, violation of Section 2.1.4.6 of the Interconnection Agreement, and improper routing
21 over Local Interconnection Service trunks shall be dismissed.

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1 IT IS FURTHER ORDERED that Staff shall open a generic docket to investigate and make
2 recommendations concerning the use of Virtual NXX.

3 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

4 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

5
6
7 CHAIRMAN

COMMISSIONER

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9
10 COMMISSIONER

COMMISSIONER

COMMISSIONER

11
12 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
13 Director of the Arizona Corporation Commission, have
14 hereunto set my hand and caused the official seal of the
15 Commission to be affixed at the Capitol, in the City of Phoenix,
16 this ____ day of _____, 2006.

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25
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28
BRIAN C. McNEIL
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

AB:mj

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COMMISSIONERS
JEFF HATCH-MILLER - Chairman
WILLIAM A. MUNDELL
MIKE GLEASON
KRISTIN K. MAYES
BARRY WONG



BRIAN C. MCNEIL
Executive Director

ARIZONA CORPORATION COMMISSION

DATE: October 2, 2006

DOCKET NO.: T-01051B-06-0175 et al.

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Amy Bjelland. The recommendation has been filed in the form of an Order on:

QWEST CORPORATION et al.

(ARBITRATION)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00 p.m.** on or before:

OCTOBER 11, 2006

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

OCTOBER 17 AND 18, 2006

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.


BRIAN C. McNEIL
EXECUTIVE DIRECTOR

1
2 **BEFORE THE ARIZONA CORPORATION COMMISSION**

3 COMMISSIONERS

4 JEFF HATCH-MILLER, Chairman
5 WILLIAM A. MUNDELL
6 MIKE GLEASON
7 KRISTIN K. MAYES
8 BARRY WONG

9 IN THE MATTER OF QWEST CORPORATION'S
10 APPLICATION FOR ARBITRATION
11 PROCEDURE AND APPROVAL OF
12 INTERCONNECTION AGREEMENT WITH
13 HANDY PAGE, AND PURSUANT TO SECTION
14 252(B) OF THE COMMUNICATIONS ACT OF
15 1934, AS AMENDED BY THE
16 TELECOMMUNICATIONS ACT OF 1996, AND
17 THE APPLICABLE STATE LAWS.

DOCKET NO. T-01051B-06-0175
DOCKET NO. T-02556A-06-0175
DOCKET NO. T-03639A-06-0175

DECISION NO. _____

ORDER

12 Open Meeting
13 October 17 and 18, 2006
14 Phoenix, Arizona

14 **BY THE COMMISSION:**

15 Having considered the entire record herein and being fully advised in the premises, the
16 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

17 **FINDINGS OF FACT**

18 1. On March 17, 2006, Qwest Corporation ("Qwest") filed with the Commission an
19 Application for Arbitration Procedure and Approval of Interconnection Agreement pursuant to
20 Section 252(b) of the Communications Act of 1934 as amended by the Telecommunications Act of
21 1996 (the "Act") for approval of an interconnection agreement between Qwest and each of eleven
22 named wireless and paging carriers¹ to implement the ruling of the Federal Communications
23 Commission ("FCC") *In the Matter of Developing a Unified Intercarrier Compensation Regime, T-*
24 *Mobile et al. Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination*
25 *Tariffs*, CC Docket 01-92, FCC 05-42 (Rel. Feb. 24, 2006) ("*T-Mobile Order*").

26 _____
27 ¹ Qwest's Application for Arbitration Procedure and Approval of Interconnection Agreement originally named eleven
28 non-petitioning parties: Azcom Paging, Inc.; Smith Bagley, Inc.; Interstate Wireless, Inc. dba Handy Page; Answerphone, Inc.; Star Page, Inc.; Glen Canyon Communications, Inc.; Nextel West Corp.; Western Wireless Corporation; Tele-Page, Inc.; Westsky Wireless, LLC; and Pac-West Telecomm, Inc.

1
2 2. After filing its petition in this docket, Qwest continued negotiations with the eleven
3 named non-petitioning carriers, and as a result, entered into interconnection agreements with many of
4 the carriers or discovered that interconnection was not possible. Qwest, therefore, moved
5 periodically to dismiss each party with which it either executed an agreement or discovered it could
6 not interconnect. Currently, all non-petitioning carriers, save Interstate Wireless, Inc. dba Handy
7 Page ("Handy Page"), have been dismissed from this proceeding and the caption has been amended
8 accordingly.

9 3. Qwest is an incumbent local exchange carrier ("ILEC") and regional Bell operating
10 company ("RBOC") with its principal place of business in Denver, Colorado. Qwest is a local
11 exchange carrier ("LEC") in Arizona.

12 4. Handy Page is a Commercial Mobile Radio Service ("CMRS") carrier licensed by the
13 FCC. Handy Page is a one-way paging carrier in Arizona and currently connects with Qwest with a
14 Type 2 interconnection.

15 5. Pursuant to the Act, the Commission was required to issue a final order within 120
16 days, in this case, by July 11, 2006. Various procedural orders extended the deadline, and the
17 timeclock currently expires on October 31, 2006.

18 6. According to Qwest and Handy Page, the only remaining issue to be decided is
19 whether Wide-Area Calling ("WAC") is a matter that is subject to arbitration and interconnection
20 agreement pursuant to the Act.

21 7. On July 13, 2006, by Procedural Order, Qwest, Handy Page and the Commission's
22 Utilities Division ("Staff") were ordered to brief the issue.

23 8. On July 28, 2006, Qwest, Handy Page and Staff filed a Joint Request for Modification
24 of Briefing Schedule in order to accommodate scheduling issues of Qwest counsel. The proposed
25 briefing schedule was adopted by Procedural Order on August 2, 2006.

26 9. On August 16, 2006, Handy Page filed a request for an extension of time to file Briefs
27 until August 25, 2006 and for Responsive Briefs to be filed September 1, 2006.

28 10. On August 17, 2006, Qwest and Staff filed separate responses to Handy Page's

request, each stating it consented to the requested extension. By Procedural Order on August 23, 2006, Handy Page's requested extension was granted.

11. On August 25, 2006, Qwest, Handy Page and Staff filed their Opening Briefs in this matter. Qwest and Handy Page each filed a Response Brief on September 1, 2006.

Wide-Area Calling

12. The question before us is whether WAC is properly subject to arbitration and interconnection agreement pursuant to the Act.

13. WAC, "also known as 'reverse billing' or 'reverse toll,' is a service in which a LEC agrees with an interconnector not to assess toll charges on calls from the LEC's end users to the interconnector's end users, in exchange for which the interconnector pays the LEC a per-minute fee to recover the LEC's toll carriage costs."² According to Qwest, "WAC provides a way for Qwest landline customers to make toll-free, direct-dialed, non-local calls to pagers in a manner that is similar to the way 800 Service works, i.e., charges are assessed to the paging carrier instead of to the originating landline customer."³

Handy Page's Position

14. Handy Page argues that WAC is in the public interest, and that WAC, as configured in Arizona, is necessary for interconnection. Handy Page draws a distinction between WAC as described by Qwest and the FCC in the *TSR Wireless Order* and Handy Page's rating and routing of calls. Handy Page states that although the *TSR Wireless Order* states "nothing prevents U S West from charging its end users for toll calls completed over the Yuma-Flagstaff T-1"⁴, because the Qwest originating line and the Handy Page assigned number are always in the same rate center, it is impossible for a "toll call" to be made over the Qwest Arizona Intra-MTA (Major Trading Area⁵) WAC that connects calls to Handy Page. Handy Page defines toll calls as those "for which the caller

² Memorandum Opinion and Order, *In the Matter of TSR Wireless, LLC et al v. U S West Communications, Inc., et al.*, 15 FCC Rcd 11166, n. 6 (Rel. June 21, 2000) ("*TSR Wireless Order*").

³ Declaration of Robert H. Weinstein, Exhibit B to Qwest's Opening Brief ("*Weinstein Declaration*"), ¶ 3.

⁴ *TSR Wireless Order* at ¶31.

⁵ In its Order regarding *Implementation of the local Competition Provisions in the Telecommunications Act of 1996*, CC Docket Nos. 96-98 and 95-185, 11 FCC Rcd 15499 ("*First Report and Order*"), the FCC set forth MTAs, the wireless license territory in which wireless or paging providers operate, as the local service area for CMRS traffic for the purpose of reciprocal compensation under Section 252(d).

1 must dial 1+10 digits in Arizona and for which the caller is, or can be, billed a toll charge.”⁶ Handy
 2 Page takes issue with the characterization by Qwest and Staff that WAC is a reverse toll service and
 3 argues that Staff’s reasoning and conclusions to that end are fundamentally flawed, based on Handy
 4 Page’s understanding of WAC as stated above.

5 15. Consistent with its stated understanding of WAC service, Handy Page argues that
 6 WAC calling must be a provision of an interconnection agreement. Handy Page further asserts,
 7 based on its understanding that no toll calls exist with WAC service, that Mr. Weinstein
 8 mischaracterizes WAC service when he states “WAC operates to suppress any toll charges that
 9 would apply to any land-to-mobile toll call between exchanges when that call is originated by a
 10 Qwest landline customer to a WAC telephone number.”⁷

11 16. Handy Page states that Qwest has improperly billed Handy Page for WAC because the
 12 FCC rules only allow Qwest to charge for delivering “non-local” calls to Handy Page, and there are
 13 no non-local calls taking place between Qwest and Handy Page. Handy Page further argues that all
 14 Qwest WAC tariff charges for intra-MTA calls are prohibited by FCC rules promulgated under the *T-*
 15 *Mobile Order*. According to Handy Page, under the FCC rules, all WAC calls sent to Handy Page
 16 are subject to section 251(b)(5) of the Act, and therefore subject to reciprocal compensation.

17 17. Handy Page also lodged objection to what it characterizes as “Qwest’s inadequate,
 18 dubious, and legally questionable responses to Handy Page’s data request.”⁸

19 *Qwest’s and Staff’s Position*

20 18. Qwest points out that Handy Page’s argument relating to whether WAC is in the
 21 public interest is not properly before the Commission in this matter, because the sole issue remaining
 22 in this docket is whether WAC is necessary for interconnection.

23 19. Staff and Qwest agree that under the *T-Mobile Order*, the FCC amended its rules to
 24 prohibit LECs from imposing compensation obligations for reciprocal compensation traffic pursuant
 25 to tariff. The FCC also permitted ILECs to request interconnection from a CMRS provider and
 26

27 ⁶ Handy Page Reply Brief at 4.

28 ⁷ *Id.* at 11.

⁸ Handy Page Opening Brief at 11.

1 involve the negotiation and arbitration procedures set forth in Section 252 of the Act. From the date of
2 the *T-Mobile Order* on a going-forward basis, ILEC tariffs containing the terms, conditions and rates
3 for CMRS reciprocal compensation arrangements were no longer permissible.

4 20. Qwest argues that WAC is a billing service that is not subject to interconnection
5 agreement under the Act, and asserts that WAC is not necessary for interconnection and is not
6 required to be provided under the FCC's rules. Qwest cites the *TSR Wireless Order*, wherein the
7 FCC stated explicitly that WAC is not necessary for interconnection or for the provision of the
8 CMRS carrier to its customers, and further stated that LECs are not required to provide WAC under
9 FCC rules. Qwest further stated that it does not bill Handy Page for local calls in violation of the *TSR*
10 *Wireless Order*.

11 21. Staff provided a Statement analyzing the state of the law regarding WAC service.
12 According to Staff, Qwest is obligated to establish reciprocal compensation arrangements for the
13 exchange of local traffic between itself and a CMRS provider pursuant to the FCC's *First Report and*
14 *Order*. Staff agrees with Qwest that under the *TSR Wireless Order*, Qwest's WAC service may be
15 offered on a tariffed basis, rather than through interconnection.

16 22. Qwest points out the distinction drawn by the FCC between a LEC's duty to deliver
17 calls within the MTA at no charge to the paging carrier, versus the ability of the LEC to charge its
18 own end user for placing the call, where the former is considered carrier compensation under the
19 FCC's reciprocal compensation rules and the latter is not. The FCC illustrated the distinction in the
20 *TSR Wireless Order*:

21
22 Pursuant to Section 51.703(b), a LEC may not charge CMRS providers for
23 facilities used to deliver LEC-originated traffic that originates and
24 terminates within the same MTA, as this constitutes local traffic under our
25 rules. Such traffic falls under our reciprocal compensation rules if carried
26 by the incumbent LEC, and under our access charge rules if carried by an
27 interexchange carrier. This may result in the same call being viewed as a
28 local call by the carriers and a toll call by the end-user. For example, to
the extent the Yuma-Flagstaff T-1 is situated entirely within an MTA,
does not cross a LATA boundary, and is used solely to carry U S West-
originated traffic, U S West must deliver the traffic to TSR's network
without charge. However, nothing prevents U S West from charging its
end users for toll calls completed over the Yuma-Flagstaff T-1. Similarly,

1 section 51.703(b) does not preclude TSR and U S West from entering into
2 wide area calling or reverse billing arrangements whereby TSR can "buy
3 down" the cost of such toll calls to make it appear to end users that they
4 have made a local call rather than a toll call. Should paging providers and
5 LECs decide to enter into wide area calling or reverse billing
6 arrangements, nothing in the [FCC's] rules prohibits a LEC from charging
7 the paging carrier for those services.⁹

8 Qwest argues that the distinction reflects the two transactions involved between interconnecting
9 carriers when a call is placed: one, between the originating network and terminating network; the
10 second, between the originating network provider and its customer. Qwest asserts that the second
11 transaction, between the originating network provider and its customer, is the toll service used by a
12 Qwest customer who calls a pager number, and is associated with WAC. Staff and Qwest note that in
13 its *TSR Wireless Order*, the FCC specifically determined that rule 51.703(b) did not prohibit Qwest
14 from charging for WAC. Staff asserts that this essentially means that WAC is not a cost related to
15 LEC originating traffic. Staff further notes that the FCC expressly stated that WAC is not necessary
16 for interconnection or for the provision of TSR's service to its customers. Staff therefore concluded
17 that Qwest's WAC service is not subject to reciprocal compensation and is therefore not subject to
18 interconnection agreement.

19 23. Staff points out that Handy Page is not required to accept the template agreement if it
20 disputes specific terms and may seek to arbitrate disputed issues before the Commission. However,
21 because Handy Page and Qwest appear to have agreed on all issues except whether WAC is subject
22 to interconnection agreement, there appears no issue to arbitrate between the two parties.

23 24. Qwest further argues that its WAC tariff and the interconnection agreement at hand in
24 this docket are not "inextricably intertwined," as asserted by Handy Page, because it is not necessary
25 to purchase WAC in order to interconnect with Qwest.

26 25. In its response to Handy Page, Qwest argues that the justness and reasonableness of
27 the WAC tariff rates may not be adjudicated in an arbitration under § 252(e) because WAC is not an
28 interconnection facility or network element. Qwest states that WAC charges are established in
Qwest's Commission-approved tariff, and there is no basis to review the tariff in this proceeding.

⁹ *TSR Wireless Order* at ¶31 (footnotes omitted).

1 26. Qwest is agreeable to paying Handy Page termination compensation for Qwest
2 originated intra-MTA calls, including WAC calls, for Type 2 interconnection.

3 Resolution

4 27. No resolution of Handy Page's assertion that WAC is in the public interest is
5 necessary here, as the sole issue before us is whether WAC is a telecommunications service subject to
6 arbitration.

7 28. We agree with Qwest that the *TSR Wireless Order* addresses the same matter at issue
8 in this Docket. The FCC found that WAC service is unnecessary for interconnection or the provision
9 of the paging or wireless carrier to its customers.¹⁰ We find that Handy Page's arguments that no
10 "toll" calls exist between Qwest and Handy Page's interconnection is erroneous. We further agree
11 that Handy Page's remaining arguments are disposed of by our resolution of this matter, and find that
12 no other items remain to be arbitrated between Qwest and Handy Page.

13 29. Under the applicable law and rules, WAC is a tariffed billing service unnecessary for
14 interconnection, and is therefore not a telecommunications service subject to arbitration under
15 Section 251(b) of the Act. Qwest's offering of WAC by way of its tariff is appropriate.

16 30. Qwest and Handy Page have settled the remaining issues associated with the proposed
17 interconnection agreement, and should therefore file their negotiated interconnection agreement in
18 this Docket consistent with this Decision.

19 CONCLUSIONS OF LAW

20 1. Qwest is a public service corporation within the meaning of Article XV of the Arizona
21 Constitution and A.R.S. §§ 40-281 and 40-282.

22 2. Qwest is a telecommunications carrier and ILEC within the meaning of 47 U.S.C. §
23 252.

24 3. Handy Page is a public service corporation within the meaning of Article XV of the
25 Arizona Constitution.

26 4. Handy Page is a telecommunications carrier within the meaning of 47 U.S.C. § 252.

27
28 ¹⁰ *TSR Wireless Order* at ¶30.

1 5. The Commission has jurisdiction over Qwest and Handy Page and of the subject
2 matter of the Petition.

3 6. The Commission's resolution of the issues pending herein is just and reasonable,
4 meets the requirements of the Act and regulations prescribed by the FCC pursuant to the Act, is
5 consistent with the best interests of the parties, and is in the public interest.

6 ORDER

7 IT IS THEREFORE ORDERED that Wide Area Calling is not a telecommunications service
8 subject to arbitration under Section 251(b) of the Act.

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1 IT IS FURTHER ORDERED that Qwest and Handy Page shall file their negotiated
2 Interconnection Agreement that is consistent with the findings herein within 30 days of the effective
3 date of this Decision.

4 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.
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8 CHAIRMAN

COMMISSIONER

9
10 COMMISSIONER

COMMISSIONER

COMMISSIONER

11
12 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
13 Director of the Arizona Corporation Commission, have
14 hereunto set my hand and caused the official seal of the
15 Commission to be affixed at the Capitol, in the City of Phoenix,
16 this ____ day of _____, 2006.

17 BRIAN C. McNEIL
EXECUTIVE DIRECTOR

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20 DISSENT _____

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22 DISSENT _____
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QWEST CORPORATION et al.

2 DOCKET NO.:

T-01051B-06-0175 et al.

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BRIAN C. McNEIL
Executive Director

ARIZONA CORPORATION COMMISSION

DATE: January 9, 2006

DOCKET NO: T-04128A-04-0035

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Amy Bjelland. The recommendation has been filed in the form of an Order on:

SANDRA MANSFIELD dba S&R COMMUNICATIONS

(CC&N CANCELLATION)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00 p.m.** on or before:

JANUARY 18, 2006

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

JANUARY 24 AND 25, 2006

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.


BRIAN C. McNEIL
EXECUTIVE DIRECTOR

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 JEFF HATCH-MILLER, Chairman
4 WILLIAM A. MUNDELL
5 MARC SPITZER
6 MIKE GLEASON
7 KRISTIN K. MAYES

8 IN THE MATTER OF THE APPLICATION OF
9 SANDRA MANSFIELD dba S&R
10 COMMUNICATION FOR THE CANCELLATION
11 OF THE CERTIFICATE OF CONVENIENCE AND
12 NECESSITY TO PROVIDE CUSTOMER-OWNED
13 PAY TELEPHONE SERVICE IN THE STATE OF
14 ARIZONA.

DOCKET NO. T-04128A-04-0035

DECISION NO. _____

ORDER

15 Open Meeting
16 January 24 and 25, 2006
17 Phoenix, Arizona

18 **BY THE COMMISSION:**

19 Having considered the entire record herein and being fully advised in the premises, the
20 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

21 **FINDINGS OF FACT**

22 1. Sandra Mansfield dba S&R Communications ("Applicant") has a Certificate of
23 Convenience and Necessity ("Certificate") to provide customer-owned pay telephone ("COPT")
24 service in the State of Arizona pursuant to Decision No. 65462 (December 19, 2002).

25 2. On January 20, 2004, Applicant filed with the Commission an application for
26 cancellation of its Certificate. Applicant indicated that it no longer provides COPT service in the
27 State of Arizona and is not requesting authority to sell its COPT assets.

28 3. On December 28, 2005, the Commission's Utilities Division Staff ("Staff") filed a
Staff Report, recommending approval of the application to cancel Applicant's Certificate without a
hearing.

CONCLUSIONS OF LAW

1 Applicant is a public service corporation within the meaning of Article XV of the
Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

2 The Commission has jurisdiction over Applicant and the subject matter of the

1 application.

2 3. The cancellation of Applicant's Certificate is in the public interest.

3 4. Pursuant to A.R.S. § 40-282, the Commission may issue Decisions regarding COPT
4 Certificates without a hearing.

5 5. Staff's recommendation in Findings of Fact No. 3 is reasonable and should be
6 adopted.

7 **ORDER**

8 IT IS THEREFORE ORDERED that the application of Sandra Mansfield dba S&R
9 Communication for the cancellation of the Certificate of Convenience and Necessity to provide
10 customer-owned pay telephone service shall be, and is hereby, approved.

11 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

12 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

13
14 _____
CHAIRMAN

COMMISSIONER

15
16
17 _____
COMMISSIONER

COMMISSIONER

COMMISSIONER

18
19 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
20 Director of the Arizona Corporation Commission, have
21 hereunto set my hand and caused the official seal of the
Commission to be affixed at the Capitol, in the City of Phoenix,
this ____ day of _____, 2006.

22
23 _____
BRIAN C. McNEIL
EXECUTIVE DIRECTOR

24
25 DISSENT _____

26
27 DISSENT _____

28 AB:mj

1 SERVICE LIST FOR: SANDRA MANSFIELD dba S&R COMMUNICATION

2 DOCKET NO.: T-04128A-04-0035

3 Sandra Mansfield
4 3626 Crystal Drive
5 Golden Valley, AZ 86413

6 Christopher Kempley, Chief Counsel
7 Legal Division
8 ARIZONA CORPORATION COMMISSION
9 1200 West Washington Street
10 Phoenix, Arizona 85007

11 Ernest G. Johnson, Director
12 Utilities Division
13 ARIZONA CORPORATION COMMISSION
14 1200 West Washington Street
15 Phoenix, Arizona 85007
16
17
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COMMISSIONERS
JEFF HATCH-MILLER - Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES



BRIAN C. McNEIL
Executive Director

ARIZONA CORPORATION COMMISSION

DATE: June 8, 2006

DOCKET NO.: T-20443A-06-0112

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Amy Bjelland. The recommendation has been filed in the form of an Order on:

SPRINT LONG DISTANCE, INC.

(CC&N/RESELLER)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00 p.m.** on or before:

JUNE 19, 2006

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

JUNE 27 AND 28, 2006

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.


BRIAN C. McNEIL
EXECUTIVE DIRECTOR

1
2 **BEFORE THE ARIZONA CORPORATION COMMISSION**

3 COMMISSIONERS

4 JEFF HATCH-MILLER, Chairman
5 WILLIAM A. MUNDELL
6 MARC SPITZER
7 MIKE GLEASON
8 KRISTIN K. MAYES

9 IN THE MATTER OF THE APPLICATION OF
10 SPRINT LONG DISTANCE, INC. FOR A
11 CERTIFICATE OF CONVENIENCE AND
12 NECESSITY TO PROVIDE RESOLD
13 INTEREXCHANGE SERVICE AND FOR
14 DETERMINATION THAT SERVICES OF THE
15 APPLICANT ARE COMPETITIVE.

DOCKET NO. T-20443A-06-0112

DECISION NO. _____

ORDER

11 Open Meeting
12 June 27 and 28, 2006
13 Phoenix, Arizona

14 **BY THE COMMISSION:**

15 Having considered the entire record herein and being fully advised in the premises, the
16 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

17 FINDINGS OF FACT

18 1. On February 27, 2006, Sprint Long Distance, Inc. ("Applicant") filed with the
19 Commission an application for a Certificate of Convenience and Necessity ("Certificate") to provide
20 resold¹ interexchange services within the State of Arizona.

21 2. Applicant was incorporated in 2005 as a new start-up entity.

22 3. On March 31, 2006, the Commission's Utilities Division Staff ("Staff") issued its
23 Letter of Insufficiency and First Set of Data Requests.

24 4. On April 14, 2006, Applicant filed its response to Staff's Data Requests, including an
25 Affidavit of Publication indicating compliance with the Commission's notice requirements.

26 5. On June 1, 2006, Staff filed a Staff Report which included Staff's fair value rate base

27 _____
28 ¹ In Decision No. 58926 (December 22, 1994), the Commission found that resold telecommunications providers ("resellers") are public service corporations subject to the jurisdiction of the Commission.

1 determination in this matter and recommended approval of the application subject to certain
2 conditions. The Staff Report addressed the overall fitness of Applicant to receive a Certificate and
3 also addressed whether its services should be classified as competitive and whether its initial rates are
4 just and reasonable.

5 6. Staff stated that Applicant provided unaudited consolidated financial statements of the
6 parent company, Sprint Nextel Corporation, for the year ending September 30, 2005, which lists
7 assets of \$101.135 billion, equity of \$51.532 billion and net income of \$1.588 billion.

8 7. Applicant's tariff indicates that it requires deposits from its customers for services.
9 Therefore, Staff recommended that the Applicant procure a performance bond equal to \$10,000,
10 which should be increased if at any time it would be insufficient to cover advances, deposits, and/or
11 prepayments collected from the Applicant's customers. The bond amount should be increased in
12 increments of \$5,000 when the total amount of the advances, deposits, and/or prepayments is within
13 \$1,000 of the bond amount. Staff recommended that proof of the performance bond be docketed
14 within 365 days of the effective date of this Decision or 30 days prior to the provision of services,
15 whichever comes first, and must remain in effect until further order of the Commission. Staff stated
16 that if the Applicant does not collect an advance, deposit, and/or prepayment at some time in the
17 future, that the Applicant be allowed to file a request for cancellation of its established performance
18 bond. The request should be filed with the Commission for Staff's review, upon completion of
19 which, Staff will forward its recommendation to the Commission.

20 8. In the event that the Applicant experiences financial difficulties, there will be minimal
21 impact to its customers because end users can access other interexchange providers via dial around
22 service or, in the longer term, the customer may desire to permanently switch to another provider.

23 9. Generally, rates for competitive services are not set according to rate of return
24 regulation, but are heavily influenced by the market. Staff stated that based on information obtained
25 from the Applicant, it has determined that Applicant's fair value rate base ("FVRB") is zero and
26 Applicant's FVRB is too small to be useful in a fair value analysis, and is not useful in setting rates.
27 Staff reviewed the rates to be charged by the Applicant and believes they are just and reasonable
28 because they are comparable to several long distance carriers operating in Arizona, as well as

1 comparable to rates the applicant charges in other jurisdictions.

2 10. Staff believes that Applicant has no market power and that the reasonableness of its
3 rates will be evaluated in a market with numerous competitors. In light of the competitive market in
4 which the Applicant will be providing its services, Staff believes that the rates in Applicant's
5 proposed tariffs for its competitive services will be just and reasonable, and recommends that the
6 Commission approve them.

7 11. Commission rules provide pricing flexibility by allowing competitive
8 telecommunication service companies to price their services at or below the maximum rates
9 contained in their tariffs as long as the pricing of those services complies with A.A.C. R14-2-1109.
10 This requires the Applicant to file a tariff for each competitive service that states the maximum rate
11 as well as the effective (actual) price that will be charged for the service. Any changes to the
12 Applicant's effective (actual) price for a service must comply with A.A.C. R14-2-1109, which
13 provides that the minimum rates for the applicant's competitive services must not be below the
14 Applicant's total service long run incremental costs of providing the services. The Applicant's
15 maximum rates should be the maximum rates proposed by the Applicant in its most recent tariffs on
16 file with the Commission. Future changes to the maximum rates must comply with A.A.C. R14-2-
17 1110.

18 12. Staff recommended approval of Applicant's application subject to the following
19 conditions:

20 (a) The Applicant should be ordered to comply with all Commission rules, orders,
21 and other requirements relevant to the provision of intrastate telecommunications
22 service;

23 (b) The Applicant should be ordered to maintain its accounts and records as
24 required by the Commission;

25 (c) The Applicant should be ordered to file with the Commission all financial and
26 other reports that the Commission may require, and in a form and at such times as the
27 Commission may designate;

28 (d) The Applicant should be ordered to maintain on file with the Commission all
current tariffs and rates, and any service standards that the Commission may require;

1 (e) The Applicant should be ordered to comply with the Commission's rules and
2 modify its tariffs to conform to these rules if it is determined that there is a conflict
3 between the Applicant's tariffs and the Commission's rules;

4 (f) The Applicant should be ordered to cooperate with Commission investigations
5 including, but not limited to, customer complaints;

6 (g) The Applicant should be ordered to participate in and contribute to the Arizona
7 Universal Service Fund, as required by the Commission;

8 (h) The Applicant should be ordered to notify the Commission immediately upon
9 changes to the Applicant's name, address or telephone number;

10 (i) The Applicant's intrastate interexchange service offerings should be classified
11 as competitive pursuant to A.A.C. R14-2-1108;

12 (j) The Applicant's maximum rates should be the maximum rates proposed by the
13 Applicant in its proposed tariffs. The minimum rates for the Applicant's competitive
14 services should be the Applicant's total service long run incremental costs of
15 providing those services as set forth in A.A.C. R14-2-1109;

16 (k) In the event that the Applicant states only one rate in its proposed tariff for a
17 competitive service, the rate stated should be the effective (actual) price to be charged
18 for the service as well as the service's maximum rate;

19 (l) In the event the Applicant requests to discontinue and/or abandon its service
20 area it must provide notice to both the Commission and its customers in accordance
21 with A.A.C. R14-2-1107; and

22 (m) Before Applicant accepts customers transferred from any telecommunications
23 service provider to its network, it must make sure that the entity transferring the
24 customers has obtained necessary Commission approval and a waiver to the
25 Commission's slamming and cramming rules.

26 13. Staff further recommended that Applicant's Certificate should be conditioned upon the
27 following:
28

(a) Applicant shall file a conforming tariff for each service within its CC&N
within 365 days from the date of an Order in this matter, or 30 days prior to
providing service, whichever comes first.

(b) Applicant shall provide proof of procuring a performance bond as described
below, and file proof of that performance bond within 365 days from the date
of an Order in this matter, or 30 days prior to providing service, whichever
comes first. The performance bond must remain in effect until further order of
the Commission. However, if at some time in the future, the Applicant does
not collect from its customers an advance, deposit, and/or prepayment, the

1 Applicant should be allowed to file a request for cancellation of its established
2 performance bond regarding its resold interexchange service with the
3 Commission for Staff's review, after which, Staff will forward its
4 recommendation to the Commission.

- 5 (c) Applicant shall procure a performance bond in the initial amount of \$10,000,
6 with the minimum bond amount of \$10,000 to be increased if at any time it
7 would be insufficient to cover all advances, deposits, prepayments collected
8 from its customers, in the following manner: The bond amount should be
9 increased in increments of \$5,000, with such increases to occur whenever the
10 total amount of the advances, deposits or prepayments reaches a level within
11 \$1,000 under the actual bond amount.

12 14. Staff recommended that if the Applicant fails to meet the timeframes outlined in
13 Finding of Fact No. 13 above, then Applicant's Certificate should become null and void after due
14 process.

15 15. The rates proposed by these filings are for competitive services.

16 16. Staff's recommendations as set forth herein are reasonable.

17 CONCLUSIONS OF LAW

18 1. Applicant is a public service corporation within the meaning of Article XV of the
19 Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

20 2. The Commission has jurisdiction over Applicant and the subject matter of the
21 application.

22 3. Notice of the application was given in accordance with the law.

23 4. Applicant's provision of resold interexchange telecommunications services is in the
24 public interest.

25 5. Applicant is a fit and proper entity to receive a Certificate as conditioned herein for
26 providing competitive resold interexchange telecommunications services in Arizona.

27 6. Staff's recommendations are reasonable and should be adopted.

28 ORDER

IT IS THEREFORE ORDERED that the application of Sprint Long Distance, Inc. for a
Certificate of Convenience and Necessity for authority to provide competitive resold interexchange
telecommunications services, except local exchange services, is hereby granted, conditioned upon its
compliance with the condition recommended by Staff as set forth above.

1 IT IS FURTHER ORDERED that Staff's recommendations set forth in Finding of Fact No.
2 12 above are hereby adopted.

3 IT IS FURTHER ORDERED that Sprint Long Distance, Inc. shall comply with the adopted
4 Staff recommendations as set forth in Finding of Fact No. 12, above.

5 IT IS FURTHER ORDERED that if Sprint Long Distance, Inc. fails to meet the timeframes
6 outlined in Finding of Fact. No. 13 above that the Certificate of Convenience and Necessity
7 conditionally granted herein shall become null and void after due process.

8 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

9 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.
10
11

12 CHAIRMAN

COMMISSIONER

13
14 COMMISSIONER

COMMISSIONER

COMMISSIONER

15 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
16 Director of the Arizona Corporation Commission, have
17 hereunto set my hand and caused the official seal of the
18 Commission to be affixed at the Capitol, in the City of Phoenix,
19 this ____ day of _____, 2006.

20 BRIAN C. McNEIL
EXECUTIVE DIRECTOR

21 DISSENT _____
22
23

24 DISSENT _____
25
26

27 AB:mj
28

1 SERVICE LIST FOR: SPRINT LONG DISTANCE, INC.

2 DOCKET NO.: T-20443A-06-0112

3 Joan S. Burke
4 OSBORN MALEDON, P.A.
5 2929 North Central Avenue, 21st Floor
6 Phoenix, AZ 85012

7 Dan F. Kerling
8 SPRINT NEXTEL
9 6360 Sprint Parkway
10 Overland Park, KS 66251

11 Christopher Kempley, Chief Counsel
12 Legal Division
13 ARIZONA CORPORATION COMMISSION
14 1200 West Washington Street
15 Phoenix, AZ 85007

16 Ernest G. Johnson, Director
17 Utilities Division
18 ARIZONA CORPORATION COMMISSION
19 1200 West Washington Street
20 Phoenix, AZ 85007

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COMMISSIONERS
JEFF HATCH-MILLER - Chairman
WILLIAM A. MUNDELL
MIKE GLEASON
KRISTIN K. MAYES
BARRY WONG



BRIAN C. MCNEIL
Executive Director

ARIZONA CORPORATION COMMISSION

DATE: DECEMBER 28, 2006

DOCKET NO: T-03777A-05-0544

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Amy Bjelland. The recommendation has been filed in the form of an Opinion and Order on:

360NETWORKS (USA), INC.
(CC&N/FACILITIES-BASED)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

JANUARY 8, 2007

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

JANUARY 16, 2007 and JANUARY 17, 2007

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250. For information about the Open Meeting, contact the Executive Secretary's Office at (602) 542-3931.


BRIAN C. McNEIL
EXECUTIVE DIRECTOR

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 JEFF HATCH-MILLER, Chairman
4 WILLIAM A. MUNDELL
5 MIKE GLEASON
6 KRISTIN K. MAYES
7 BARRY WONG

8 IN THE MATTER OF THE APPLICATION OF
9 360NETWORKS (USA), INC. FOR A
10 CERTIFICATE OF CONVENIENCE AND
11 NECESSITY TO PROVIDE FACILITIES-BASED
12 LOCAL EXCHANGE SERVICES WITHIN
13 ARIZONA.

DOCKET NO. T-03777A-05-0544

DECISION NO. _____

OPINION AND ORDER

14 DATE OF HEARING: December 6, 2006

15 PLACE OF HEARING: Phoenix, Arizona

16 ADMINISTRATIVE LAW JUDGE: Amy B. Bjelland¹

17 APPEARANCES: Mr. Michael Patten, ROSHKA, DEWULF & PATTEN,
18 PLC, on behalf of 360Networks (USA), Inc.; and

19 Mr. Kevin Torrey, Staff Attorney, Legal Division, on
20 behalf of the Utilities Division of the Arizona
21 Corporation Commission.

22 **BY THE COMMISSION:**

23 Having considered the entire record herein and being fully advised in the premises, the
24 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

25 FINDINGS OF FACT

26 1. On July 29, 2005, 360networks (USA), Inc. ("360networks" or "Applicant")
27 submitted to the Arizona Corporation Commission ("Commission") an application for a Certificate of
28 Convenience and Necessity ("Certificate") to provide facilities-based local exchange
telecommunications services within the State of Arizona. The application petitioned the Commission
for determination that its proposed services should be classified as competitive.

2 On October 5, 2006, a Procedural Order was issued setting this matter for hearing on
December 6, 2006 and setting various procedural deadlines.

¹ ALJ Bjelland conducted the hearing, and CALJ Farmer drafted the Recommended Opinion and Order.

1 3. On October 27, 2006, the Commission's Utilities Division Staff ("Staff") filed a Staff
2 Report recommending approval of 360networks's application subject to certain conditions.

3 4. On October 27, 2006, Applicant docketed an Affidavit of Publication that
4 demonstrates proof of publication as required by the October 5, 2006 Procedural Order.

5 5. On December 6, 2006, a full public hearing in this matter was held as scheduled. The
6 hearing was conducted before a duly authorized Administrative Law Judge. Mr. Rogier DuCloo
7 testified for the Applicant, and Mr. John Bostwick testified on behalf of Staff.

8 6. At the conclusion of the hearing, the Administrative Law Judge took the matter under
9 advisement.

10 7. On June 30, 2000, the Applicant (*fka* Worldwide Fiber Networks, Inc.) was granted a
11 CC&N to provide facilities-based long distance telecommunications services in Arizona in Decision
12 No. 62710. 360networks serves fifteen commercial private-line interexchange data service
13 subscribers in Arizona and has been authorized to provide interexchange service in 44 states.

14 8. The Applicant is organized under the laws of the State of Nevada and is authorized to
15 do business in Arizona.

16 9. The Applicant intends to offer "(wholesale) local exchange access telecommunications
17 services to interconnecting carriers." (Staff Report, p. 1) It does not intend to provide retail local
18 exchange telecommunications services. 360networks submitted a copy of its wholesale local
19 exchange access service tariff. Because switched access service is a wholesale service provided
20 solely to other carriers, and not to retail customers, Staff does not recommend that 360networks be
21 required to maintain a bond for the switched access portion of the CC&N. However, Staff
22 recommended that because Decision No. 62710 did not require the posting of a bond, 360networks
23 should be required to maintain a bond for its facilities-based interexchange service, consistent with
24 current Commission requirements.

25 10. Staff testified that the Applicant has the technical capability to provide the services
26 that are proposed in its Application.

27 11. According to Staff, 360networks submitted audited financial statements of its parent
28 company, 360networks Corporation, for the year ending December 31, 2005. These financial

1 statements list assets in excess of \$114.3 million, equity in excess of \$36.4 million, and a net loss in
2 excess of \$5.1 million.

3 12. Currently there are several incumbent providers of local exchange services in the
4 service territory requested by Applicant, and a number of new Competitive Local Exchange Carriers
5 ("CLECs") have been authorized to provide local exchange service. According to Staff, however,
6 Incumbent Local Exchange Carriers ("ILECs") hold a virtual monopoly in the Switched Access
7 Service Market, and at locations where ILECs provide switched access service, the Applicant will be
8 entering the market as alternative provider of switched access and will have to compete with those
9 companies in order to obtain customers.

10 13. Staff believes that the Applicant's proposed services should be classified as
11 competitive. There are alternatives to Applicant's services, and the Applicant will have to convince
12 customers to purchase its services. The Applicant has no ability to adversely affect the Switched
13 Access Service markets. Therefore, Applicant currently has no market power in the Switched Access
14 Service markets where alternative providers of telecommunications services exist. Staff therefore
15 recommends that the Applicant's proposed services be classified as competitive.

16 14. It is appropriate to classify all of Applicant's authorized services as competitive.

17 15. Staff recommended that 360networks' Application for a Certificate to provide
18 Switched Access Service be granted and also recommended that:

- 19
- 20 a) The Applicant comply with all Commission rules, orders, and other requirements relevant
21 to the provision of intrastate telecommunications service;
 - 22 b) The Applicant be required to notify the Commission immediately upon changes to the
23 Applicant's name, address or telephone number;
 - 24 c) The Applicant cooperate with Commission investigations including, but not limited to,
25 customer complaints;
 - 26 d) If the Applicant desires to discontinue service and/or abandon its service area, it must
27 comply with A.A.C. R14-2-1107, or it may face forfeiture of its performance bond.

28 16. Staff additionally recommended that 360networks' application for a CC&N to provide
intrastate telecommunications services should be granted subject to the following conditions:

- 1 (a) The Applicant docket a conforming switched exchange access tariff with
 2 Docket Control as a compliance item for the service within its CC&N within
 3 365 days from the date of an Order in this matter or 30 days prior to providing
 4 service, whichever comes first. The tariff submitted shall coincide with the
 5 application and state that the Applicant does collect advances and deposits
 6 from its customers;
 7
 8 (b) That 360networks procure a performance bond equal to \$100,000. The
 9 minimum bond amount of \$100,000 should be increased if at any time it would
 10 be insufficient to cover prepayments or deposits collected from 360networks'
 11 customers. The bond amount should be increased in increments of \$50,000
 12 whenever the total amount of the advances, deposits and prepayments is within
 13 \$10,000 of the bond amount;
 14
 15 (b) That 360networks file the original performance bond with the Commission's
 16 Business Office and file copies with Docket Control, as a compliance item in
 17 this docket, within 30 days of the effective date of this Order and the bond
 18 must remain in effect until further Order of the Commission;² and
 19
 20 (c) If the above timeframes are not met, that 360networks's CC&N should become
 21 null and void after due process.

22 17. In its Staff Report, Staff stated that based on information obtained from the Applicant,
 23 it has determined that 360networks's fair value rate base is \$90,000.

24 18. Staff further stated that in general, rates for competitive services are not set according
 25 to rate of return regulation, and Staff reviewed the rates to be charged by the company and believes
 26 that they are just and reasonable as they are comparable to other competitive local carriers and local
 27 incumbent carriers operating in Arizona and comparable to the rates the Applicant charges in other
 28 jurisdictions. The rate to be ultimately charged by the company will be heavily influenced by the
 market. Therefore, while Staff considered the fair value rate base information submitted by
 360networks, the fair value rate base information provided should not be given substantial weight in
 this analysis.

19. Staff's recommendations, as set forth herein, are reasonable.

20. 360networks's fair value rate base is determined to be \$90,000 for purposes of this
 proceeding.

...

² At hearing, although the Staff witness indicated that the compliance section shows that a bond is in place, compliance with the filing requirements set forth herein is still appropriate.

CONCLUSIONS OF LAW

1. Applicant is a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

2. The Commission has jurisdiction over Applicant and the subject matter of the Application.

3. Notice of the Application was given in accordance with the law.

4. A.R.S. § 40-282 allows a telecommunications company to file an application for a Certificate to provide competitive telecommunications services.

5. Pursuant to Article XV of the Arizona Constitution, as well as the Arizona Revised Statutes, it is in the public interest for Applicant to provide the telecommunications services set forth in its Application.

6. Applicant is a fit and proper entity to receive a Certificate authorizing it to provide the requested facilities-based local exchange telecommunications services in Arizona as conditioned by Staff's recommendations.

7. The telecommunications services that the Applicant intends to provide are competitive within Arizona.

8. Pursuant to Article XV of the Arizona Constitution as well as the Competitive Rules, it is just and reasonable and in the public interest for Applicant to establish rates and charges that are not less than the Applicant's total service long-run incremental costs of providing the competitive services approved herein.

9. Staff's recommendations, as set forth herein, are reasonable and should be adopted.

10. Applicant's competitive rates, as set forth in its proposed tariffs, are just and reasonable and should be approved.

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ORDER

IT IS THEREFORE ORDERED that the Application of 360networks (USA), Inc. for a Certificate of Convenience and Necessity for authority to provide facilities-based local exchange switched access telecommunications services in Arizona shall be, and is hereby, granted, conditioned upon 360networks (USA), Inc.'s timely compliance with the following two Ordering Paragraphs.

IT IS FURTHER ORDERED that 360networks (USA), Inc. shall file conforming tariffs in accordance with this Decision within 365 days of this Decision or 30 days prior to providing service, whichever comes first.

IT IS FURTHER ORDERED that 360networks (USA), Inc. shall obtain a performance bond or irrevocable letter of credit and shall file the original performance bond/letter of credit with the Commission's Business Office for safekeeping and shall docket copies of the performance bond as set forth herein, in the amount of \$100,000 within 30 days of the effective date of this Decision.

IT IS FURTHER ORDERED that if 360networks (USA), Inc. fails to meet the timeframes outlined in the Ordering Paragraphs above, that the Certificate of Convenience and Necessity conditionally granted herein shall become null and void after due process.

IT IS FURTHER ORDERED that 360networks (USA), Inc. shall maintain the performance bond/letter of credit until further order of the Commission.

IT IS FURTHER ORDERED that 360networks (USA), Inc. shall comply with all of the Staff recommendations set forth in the above-stated Findings of Fact and Conclusions of Law.

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1 IT IS FURTHER ORDERED that if 360networks (USA), Inc. fails to notify each of its
2 customers and the Commission at least 60 days prior to filing an application to discontinue service
3 pursuant to A.A.C. R14-2-1107, that in addition to voidance of its Certificate of Convenience and
4 Necessity, 360networks Communications, Inc.'s performance bond/letter of credit shall be forfeited.

5 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

6 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.
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10 CHAIRMAN

COMMISSIONER

11
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13 COMMISSIONER

COMMISSIONER

COMMISSIONER

14
15 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
16 Director of the Arizona Corporation Commission, have
17 hereunto set my hand and caused the official seal of the
18 Commission to be affixed at the Capitol, in the City of Phoenix,
19 this ____ day of _____, 2007.

20 BRIAN C. McNEIL
EXECUTIVE DIRECTOR

21 DISSENT _____

22
23 DISSENT _____
24
25
26
27
28

1 SERVICE LIST FOR: 360NETWORKS (USA), INC.

2 DOCKET NO.: T-03777A-05-0544

3

4 Michael W. Patten
5 ROSHKA, DEWULF & PATTEN
6 400 E. Van Buren, Suite 800
7 Phoenix, AZ 85004
8 Attorneys for 360networks (USA), Inc.

9 Christopher Kempley, Chief Counsel
10 Legal Division
11 ARIZONA CORPORATION COMMISSION
12 1200 West Washington Street
13 Phoenix, Arizona 85007

14 Ernest Johnson, Director
15 Utilities Division
16 ARIZONA CORPORATION COMMISSION
17 1200 West Washington Street
18 Phoenix, Arizona 85007

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COMMISSIONERS
JEFF HATCH-MILLER - Chairman
WILLIAM A. MUNDELL
MIKE GLEASON
KRISTIN K. MAYES
BARRY WONG



BRIAN C. MCNEIL
Executive Director

ARIZONA CORPORATION COMMISSION

DATE: DECEMBER 5, 2006

DOCKET NO: T-04207A-05-0637

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Amy Bjelland. The recommendation has been filed in the form of an Order on:

TELEGLOBE AMERICA, INC.
(CANCEL CC&N)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00 p.m.** on or before:

DECEMBER 15, 2006

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

DECEMBER 19, 2006 and DECEMBER 20, 2006

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Secretary's Office at (602) 542-3931.


BRIAN C. McNEIL
EXECUTIVE DIRECTOR

1
2 **BEFORE THE ARIZONA CORPORATION COMMISSION**

3 COMMISSIONERS

4 JEFF HATCH-MILLER Chairman
5 WILLIAM A. MUNDELL
6 MIKE GLEASON
7 KRISTIN K. MAYES
8 BARRY WONG

9 IN THE MATTER OF THE APPLICATION OF
TELEGLOBE AMERICA, INC. TO CANCEL
THEIR CERTIFICATE OF CONVENIENCE AND
NECESSITY FOR ALL
TELECOMMUNICATIONS SERVICES.

DOCKET NO. T-04207A-05-0637

DECISION NO. _____

ORDER

10 Open Meeting
11 December 19 and 20, 2006
12 Phoenix, Arizona

BY THE COMMISSION:

13 Having considered the entire record herein and being fully advised in the premises, the
14 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

15 **FINDINGS OF FACT**

16 1. On May 24, 2004, the Commission issued Decision No. 67008 which granted to
17 Teleglobe America, Inc. ("TAI" or "Applicant") a Certificate of Convenience and Necessity
18 ("Certificate") to provide competitive interLATA/intraLATA resold telecommunications services
19 except local exchange services in Arizona.

20 2. On September 2, 2005, TAI filed an application to cancel its Certificate and tariffs for
21 all telecommunications services in Arizona granted in Decision No. 67008.

22 3. On September 12, 2005, the Commission's Utilities Division ("Staff") issued a Letter
23 of Insufficiency and First Set of Data Requests to TAI.

24 4. On September 29, 2005, TAI docketed its response to Staff's Data Requests.

25 5. On November 16, 2006, Staff filed its Staff Report recommending approval of the
26 application.

27 6. Staff stated that TAI provided private line service for only two business customers in
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1 Arizona, both of which requested that TAI disconnect their service almost three years prior to TAI
2 filing its application in this docket. For one of these customers, TAI's operations center was located
3 in Ohio; for the other, TAI resold service providing a private line connection. TAI does not have any
4 employees in Arizona.

5 7. TAI did not provide telecommunications service to residential customers. TAI does
6 not currently, nor did in the past, provide telecommunications service to any customer in Arizona.
7 TAI indicated to Staff that it did not provide notice to customers in Arizona for this reason. Staff
8 stated that it believes that under these circumstances, TAI should not be required to provide its former
9 customers with notice of service cancellation pursuant to A.A.C. R14-2-1107. TAI did publish notice
10 of its application in *The Arizona Republic*.

11 8. TAI did not collect advances, deposits and/or prepayments from its customers in
12 Arizona.

13 9. Staff stated that the Consumer Services Section of the Utilities Division had no
14 consumer complaints, inquiries, and/or opinions against TAI from January 1, 2003 through May 19,
15 2006. TAI is a corporation in good standing with the Corporations Division of the Commission.

16 10. Staff further stated that there are numerous carriers in Arizona that offer similar
17 services. Staff stated its belief that approval of TAI's request to discontinue service is in the public
18 interest, and recommended approval of TAI's application and cancellation of TAI's tariffs on file
19 with the Commission.

20 11. Applicant was without any customers for several years prior to making this
21 application, and the notice requirement of A.A.C. R14-2-1107(B) should therefore be waived under
22 the unique circumstances of this case. However, this waiver should not be considered precedent for
23 other providers who wish to discontinue service. Absent the unique facts presented in this case, we
24 will strictly enforce the requirements set forth in A.A.C. R14-2-1107.

25 CONCLUSIONS OF LAW

26 1. Applicant is a public service corporation within the meaning of Article XV of the
27 Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

28 2. The Commission has jurisdiction over Applicant and the subject matter of the

1 application.

2 3. Cancellation of the Applicant's CC&N is in the public interest.

3 4. Pursuant to A.R.S. § 40-282, the Commission may issue this Decision without a
4 hearing.

5 5. Staff's recommendation is reasonable and should be adopted.

6 **ORDER**

7 IT IS THEREFORE ORDERED that Telelobe America Inc.'s Application shall be, and
8 hereby is, approved.

9 IT IS FURTHER ORDERED that Telelobe America, Inc.'s Certificate of Convenience and
10 Necessity shall be, and hereby is, cancelled.

11 IT IS FURTHER ORDERED that Telelobe America, Inc.'s tariffs on file with the
12 Commission shall be, and hereby are, cancelled.

13 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

14 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

15

16

17 CHAIRMAN

COMMISSIONER

18

19 COMMISSIONER

COMMISSIONER

COMMISSIONER

20

21 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
22 Director of the Arizona Corporation Commission, have
23 hereunto set my hand and caused the official seal of the
Commission to be affixed at the Capitol, in the City of Phoenix,
this ____ day of _____, 2006.

24

25 BRIAN C. McNEIL
EXECUTIVE DIRECTOR

26

27 DISSENT _____

28 DISSENT _____

1 SERVICE LIST FOR: TELEGLOBE AMERICA, INC.

2 DOCKET NO.: T-04207A-05-0637

3 Michael C. Wu
4 TELEGLOBE
5 One Discovery Square
6 12010 Sunset Hills Road
7 Reston, VA 20190

8 Christopher Kempley, Chief Counsel
9 Legal Division
10 ARIZONA CORPORATION COMMISSION
11 1200 West Washington Street
12 Phoenix, Arizona 85007

13 Ernest G. Johnson, Director
14 Utilities Division
15 ARIZONA CORPORATION COMMISSION
16 1200 West Washington Street
17 Phoenix, Arizona 85007

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COMMISSIONERS
JEFF HATCH-MILLER - Chairman
WILLIAM A. MUNDELL
MIKE GLEASON
KRISTIN K. MAYES
BARRY WONG



BRIAN C. MCNEIL
Executive Director

ARIZONA CORPORATION COMMISSION

DATE: September 5, 2006

DOCKET NO.: T-04257A-06-0350

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Amy Bjelland. The recommendation has been filed in the form of an Order on:

THE J. RICHARD COMPANY dba LIVE WIRE PHONE COMPANY

(CC&N CANCELLATION)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00 p.m.** on or before:

SEPTEMBER 14, 2006

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

SEPTEMBER 19 AND 20, 2006

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.


BRIAN C. McNEIL
EXECUTIVE DIRECTOR

1
2 **BEFORE THE ARIZONA CORPORATION COMMISSION**

3 **COMMISSIONERS**

4 JEFF HATCH-MILLER Chairman
5 WILLIAM A. MUNDELL
6 MIKE GLEASON
7 KRISTIN K. MAYES
8 BARRY WONG

9 IN THE MATTER OF THE APPLICATION OF
10 THE J. RICHARD COMPANY FOR
11 CANCELLATION OF ITS CERTIFICATE OF
12 CONVENIENCE AND NECESSITY FOR ITS
13 FACILITIES-BASED TELECOMMUNICATIONS
14 SERVICES AND A REQUEST FOR REDUCTION
15 IN ITS PERFORMANCE BOND.

DOCKET NO. T-04257A-06-0350

DECISION NO. _____

ORDER

11 Open Meeting
12 September 19 and 20, 2006
13 Phoenix, Arizona

14 **BY THE COMMISSION:**

15 Having considered the entire record herein and being fully advised in the premises, the
16 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

FINDINGS OF FACT

17 1. On February 15, 2005, the Commission issued Decision No. 67588 which granted to
18 the J. Richard Company dba Live Wire Phone Company ("Live Wire" or "Applicant") a Certificate
19 of Convenience and Necessity ("Certificate") to provide resold long distance, resold local exchange
20 and facilities-based local exchange telecommunications services within the State of Arizona. In that
21 Decision, Live Wire was ordered to procure a performance bond in the amount of \$135,000.

22 2. On May 30, 2006, Live Wire filed an application to cancel its facilities-based local
23 exchange service and requested a corresponding reduction in its performance bond.

24 3. In its application, Live Wire indicated that it has changed its business model and
25 wishes to provide only resold local exchange and resold long distance services. Live Wire stated that
26 although most of its customers purchase resale services, some are provided service through the use of
27 Unbundled Network Element Platforms ("UNE-P"). These accounts are being converted to resale
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1 account, the conversion of which was to be completed by July 31, 2006.

2 4. Live Wire expected services and rates to end-users to remain the same, with no
3 interruption or reduction of services. The cancellation of Applicant's facilities-based local exchange
4 certificate is an internal change that will only affect Live Wire's billing with its wholesale provider,
5 Qwest. In order to avoid customer confusion, Live Wire did not provide customer notification of the
6 change and has requested a waiver of the requirements of A.A.C. R14-2-1107. Because there will be
7 no substantive change to customers' telecommunications service provided by Live Wire, the notice
8 requirement of A.A.C. R14-2-1107(B) should therefore be waived under the unique circumstances of
9 this case. Absent the unique facts presented in this case, we will strictly enforce the requirements set
10 forth in A.A.C. R14-2-1107.

11 5. Staff stated that Live Wire does not collect deposits from customers, but is a prepaid,
12 basic service provider with service renewed by the customer on a month-to-month basis. Live Wire
13 has 65 customers, and funds collected in advance of services on a month-to-month basis do not
14 exceed \$2,000. If a customer cancels at any point during the term of service, Live Wire issues a
15 check to the customer for the unused prorated period of service. No early termination fees are
16 assessed by Applicant.

17 6. In compliance with Decision No. 67588, Live Wire currently holds a performance
18 bond of \$135,000. With its application for cancellation of the facilities-based portion of its
19 Certificate, Live Wire has requested a reduction in the required amount to \$35,000, which is
20 consistent with the performance bond requirement for providers of resold local exchange and resold
21 long distance telecommunications services.

22 7. The Consumer Services Section of the Utilities Division reported no complaints,
23 inquiries, or opinions against Applicant from January 1, 2003 through June 6, 2006. Live Wire is in
24 good standing with the Commission's Corporations Division.

25 8. Staff recommended approval of Live Wire's application to cancel its facilities-based
26 local exchange certificate. Staff further recommended a reduction in the required performance bond
27 amount, from \$135,000 to \$35,000.

28

CONCLUSIONS OF LAW

1. Applicant is a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

2. The Commission has jurisdiction over Applicant and the subject matter of the application.

3. Staff's recommendations are reasonable and should be adopted.

4. The notice requirement of A.A.C. R14-2-1107(B) should be waived, under the unique circumstances of this case.

ORDER

IT IS THEREFORE ORDERED that the Application of J. Richard Company dba Live Wire, for cancellation of its Certificate of Convenience and Necessity for its facilities-based local exchange service shall be, and is hereby, approved.

IT IS FURTHER ORDERED that the performance bond required by Decision No. 67588 shall be reduced to \$35,000.

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1 IT IS FURTHER ORDERED that all other requirements of Decision No. 67588 shall remain
2 in full force and effect.

3 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

4 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.
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8 CHAIRMAN

COMMISSIONER

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10 COMMISSIONER

COMMISSIONER

COMMISSIONER

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13 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
14 Director of the Arizona Corporation Commission, have
15 hereunto set my hand and caused the official seal of the
16 Commission to be affixed at the Capitol, in the City of Phoenix,
17 this ____ day of _____, 2006.

18
19 BRIAN C. McNEIL
20 EXECUTIVE DIRECTOR

21
22 DISSENT _____

23
24 DISSENT _____
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28

1 SERVICE LIST FOR: J. RICHARD COMPANY dba LIVE WIRE PHONE
2 COMPANY
3 DOCKET NO.: T-04257A-06-0350
4 Thomas J. Campbell
5 Michael T. Hallam
6 LEWIS AND ROCA
7 40 North Central Avenue
8 Phoenix, AZ 85004
9 Attorneys for J. Richard Company dba
10 Live Wire Phone Company
11 Christopher Kempley, Chief Counsel
12 Legal Division
13 ARIZONA CORPORATION COMMISSION
14 1200 West Washington Street
15 Phoenix, Arizona 85007
16 Ernest G. Johnson, Director
17 Utilities Division
18 ARIZONA CORPORATION COMMISSION
19 1200 West Washington Street
20 Phoenix, Arizona 85007
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COMMISSIONERS
JEFF HATCH-MILLER - Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES



BRIAN C. McNEIL
Executive Director

ARIZONA CORPORATION COMMISSION

DATE: April 11, 2006

DOCKET NO: T-03441A-05-0638

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Amy Bjelland. The recommendation has been filed in the form of an Order on:

TELEPHONE COMPANY OF CENTRAL FLORIDA, INC.

(CC&N CANCELLATION)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00 p.m.** on or before:

APRIL 20, 2006

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

MAY 2 AND 3, 2006

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.


BRIAN C. McNEIL
EXECUTIVE DIRECTOR

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 JEFF HATCH-MILLER, Chairman
4 WILLIAM A. MUNDELL
5 MARC SPITZER
6 MIKE GLEASON
7 KRISTIN K. MAYES

8 IN THE MATTER OF THE APPLICATION OF
9 TELEPHONE COMPANY OF CENTRAL
10 FLORIDA, INC. FOR CANCELLATION OF ITS
11 CERTIFICATE OF CONVENIENCE AND
12 NECESSITY TO PROVIDE COMPETITIVE
13 RESOLD INTEREXCHANGE
14 TELECOMMUNICATIONS SERVICES WITHIN
15 THE STATE OF ARIZONA.

DOCKET NO. T-03441A-05-0638

DECISION NO. _____

ORDER

16 Open Meeting
17 May 2 and 3, 2006
18 Phoenix, Arizona

19 **BY THE COMMISSION:**

20 Having considered the entire record herein and being fully advised in the premises, the
21 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

22 **FINDINGS OF FACT**

23 1. On March 30, 2001, the Commission issued Decision No. 63526 which granted to
24 Telephone Company of Central Florida, Inc. a/k/a Epicus, Inc. ("TCCF") a Certificate of
25 Convenience and Necessity ("Certificate") to provide competitive intrastate telecommunications
26 services as a reseller in the State of Arizona.

27 2. On September 2, 2005, TCCF filed an application to cancel its Certificate.

28 3. On September 13, 2005, the Commission's Utilities Division Staff ("Staff") issued a
Letter of Insufficiency and First Set of Data Requests to TCCF.

4. On September 27, 2005, TCCF filed its Response to Staff's First Set of Data Requests
and asked for a waiver of the requirement to publish legal notice of its cancellation application,
pursuant to R14-2-1107(B).

5. On March 17, 2006, Staff filed a Memorandum in this docket recommending approval
of TCCF's application and the requested waiver. Staff stated that TCCF's response indicated that

1 TCCF never collected advances, deposits and/or prepayments; had only 44 residential and one
2 business customer in its last month of providing long distance; does not have any other affiliates
3 currently offering telecommunication service in Arizona; is in the process of discontinuing long
4 distance service in 41 states;¹ is still in Chapter 11 reorganization; and customers in Arizona were
5 mailed "Notification letters of discontinuance of long distance service".²

6 6. Staff recommended approval of the waiver as requested, because direct mail had been
7 sent to all customers explaining TCCF's business change, and numerous long distance service
8 alternatives are available for customers.

9 7. Numerous other carriers in Arizona offer services similar to those that Applicant is
10 currently certificated to provide.

11 8. Given the direct mail notification to customers, it does not appear any Arizona
12 customers have been adversely affected by the requested cancellation.

13 CONCLUSIONS OF LAW

14 1. Applicant is a public service corporation within the meaning of Article XV of the
15 Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

16 2. The Commission has jurisdiction over Applicant and the subject matter of the
17 application.

18 3. The cancellation of Applicant's CC&N is in the public interest.

19 4. Pursuant to A.R.S. § 40-282, the Commission may issue this Decision without a
20 hearing.

21 5. Staff's recommendation is reasonable and should be adopted.

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28 ¹ Service will continue in states within BellSouth's Regional Bell Operating Company (RBOC) region.

² TCCF provided a sample of the letter in its Response to Staff's First Set of Data Requests.

ORDER

IT IS THEREFORE ORDERED that the Certificate of Convenience and Necessity granted to Telephone Company of Central Florida, Inc. in Decision No. 63526 is hereby cancelled.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN _____ COMMISSIONER _____

COMMISSIONER _____ COMMISSIONER _____ COMMISSIONER _____

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this ____ day of _____, 2006.

BRIAN C. McNEIL
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

AB:mj

1 SERVICE LIST FOR: TELEPHONE COMPANY OF CENTRAL FLORIDA,
2 INC.
3 DOCKET NO.: T-03441A-05-0638
4 Barbara Greene
5 Regulatory Manager
6 TCCF
7 610 Crescent Executive Court, Ste. 300
8 Lake March, FL 32746
9 Christopher Kempley, Chief Counsel
10 Legal Division
11 ARIZONA CORPORATION COMMISSION
12 1200 West Washington Street
13 Phoenix, AZ 85007
14 Ernest G. Johnson, Director
15 Utilities Division
16 ARIZONA CORPORATION COMMISSION
17 1200 West Washington
18 Phoenix, AZ 85007
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COMMISSIONERS
JEFF HATCH-MILLER - Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES



BRIAN C. McNEIL
Executive Director

ARIZONA CORPORATION COMMISSION

DATE: January 9, 2006

DOCKET NO: T-03707A-04-0814

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Amy Bjelland. The recommendation has been filed in the form of an Order on:

UNITED STATES ADVANCED NETWORK, INC.

(CC&N CANCELLATION)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00 p.m.** on or before:

JANUARY 18, 2006

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

JANUARY 24 AND 25, 2006

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.


BRIAN C. McNEIL
EXECUTIVE DIRECTOR

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 JEFF HATCH-MILLER, Chairman
4 WILLIAM A. MUNDELL
5 MARC SPITZER
6 MIKE GLEASON
7 KRISTIN K. MAYES

8 IN THE MATTER OF THE APPLICATION OF
9 UNITED STATES ADVANCED NETWORK, INC.
10 FOR CANCELLATION OF ITS CERTIFICATE OF
11 CONVENIENCE AND NECESSITY TO PROVIDE
12 RESOLD LONG DISTANCE
13 TELECOMMUNICATIONS SERVICES IN THE
14 STATE OF ARIZONA.

DOCKET NO. T-03707A-04-0814

DECISION NO. _____

ORDER

15 Open Meeting
16 January 24 and 25, 2006
17 Phoenix, Arizona

18 **BY THE COMMISSION:**

19 Having considered the entire record herein and being fully advised in the premises, the
20 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

21 **FINDINGS OF FACT**

22 1. United States Advanced Network, Inc. ("Applicant") has a Certificate of Convenience
23 and Necessity ("Certificate") to provide alternative operator service ("AOS") in the State of Arizona
24 pursuant to Decision No. 61898 (August 27, 1999).

25 2. On November 10, 2004, Applicant filed an application for cancellation of its
26 Certificate, indicating that it does not have any customers in Arizona.

27 3. On December 2, 2004, the Commission's Utilities Division Staff ("Staff") filed a
28 Letter of Insufficiency and First Set of Data Requests.

4. On December 14, 2004, Applicant filed its response to Staff's First Set of Data
Requests. Applicant indicated that it does not have any advances, deposits and/or prepayments.

5. On July 12, 2005, Applicant filed an Affidavit of Publication.

6. On October 14, 2005, Staff filed a Staff Report, recommending approval of the
application to cancel Applicant's Certificate without a hearing.

7. Staff indicated that there are no open complaints, inquiries or opinions concerning

1 Applicant.

2 8. Numerous other carriers in Arizona offer services similar to those that Applicant is
3 currently certificated to provide.

4 9. No Arizona customers will be affected by the requested cancellation.

5 **CONCLUSIONS OF LAW**

6 1. Applicant is a public service corporation within the meaning of Article XV of the
7 Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

8 2. The Commission has jurisdiction over Applicant and the subject matter of the
9 application.

10 3. The cancellation of Applicant's CC&N is in the public interest.

11 4. Pursuant to A.R.S. § 40-282, the Commission may issue this Decision without a
12 hearing.

13 5. Staff's recommendation is reasonable and should be adopted.

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ORDER

IT IS THEREFORE ORDERED that the Certificate of Convenience and Necessity granted to United States Advanced Network, Inc. in Decision No. 61898 is hereby cancelled.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I BRIAN C. McNEIL, Executive Director of the Arizona Corporation Commission, have hereunto, set my hand and caused the official seal of this Commission to be affixed at the Capitol, in the City of Phoenix, this _____ day of _____, 2006.

BRIAN C. McNEIL
Executive Director

DISSENT: _____

DISSENT: _____

AB: mj

SERVICE LIST FOR:

UNITED STATES ADVANCED NETWORK, INC.

DOCKET NO.:

T-03707A-04-0814

Connie Wightman
Technologies Management, Inc.
210 North Park Avenue
Winter Park, FL 32789

Christopher Kempley, Chief Counsel
Legal Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, AZ 85007

Ernest G. Johnson, Director
Utilities Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, AZ 85007

COMMISSIONERS
JEFF HATCH-MILLER - Chairman
WILLIAM A. MUNDELL
MIKE GLEASON
KRISTIN K. MAYES
BARRY WONG



BRIAN C. MCNEIL
Executive Director

ARIZONA CORPORATION COMMISSION

DATE: OCTOBER 19, 2006

DOCKET NO: T-03973A-05-0591

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Amy Bjelland. The recommendation has been filed in the form of an Order on:

VIVO COMMUNICATIONS-AZ, LLC
(CANCEL CC&N)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00 p.m.** on or before:

OCTOBER 30, 2006

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

NOVEMBER 21, 2006 and NOVEMBER 22, 2006

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Secretary's Office at (602) 542-3931.


BRIAN C. McNEIL
EXECUTIVE DIRECTOR

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 JEFF HATCH-MILLER, Chairman
4 WILLIAM A. MUNDELL
5 MIKE GLEASON
6 KRISTIN K. MAYES
7 BARRY WONG

8 IN THE MATTER OF THE APPLICATION OF
9 VIVO COMMUNICATIONS-AZ, LLC FOR
10 CANCELLATION OF ITS CERTIFICATE OF
11 CONVENIENCE AND NECESSITY TO PROVIDE
12 FACILITIES-BASED AND RESOLD LOCAL
13 EXCHANGE SERVICES.

DOCKET NO. T-03973A-05-0591

DECISION NO. _____

ORDER

14 Open Meeting
15 November 21 and 22, 2006
16 Phoenix, Arizona

17 **BY THE COMMISSION:**

18 * * * * *

19 Having considered the entire record herein and being fully advised in the premises, the
20 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

21 **FINDINGS OF FACT**

22 1. In Decision No. 63923 (August 6, 2001), the Arizona Corporation Commission
23 ("Commission") granted Vivo Communications-AZ, LLC ("Vivo" or "Applicant") a Certificate of
24 Convenience and Necessity ("Certificate") to provide competitive facilities-based and resold local
25 exchange, interexchange and exchange access services in Arizona.

26 2. On August 15, 2005, Vivo filed an application for cancellation of its Certificate. The
27 application stated that Vivo has no customers and does not hold deposits.

28 3. On August 29, 2006, the Commission's Utilities Division ("Staff") issued a Letter of
Insufficiency and First Set of Data Requests to Vivo. Also on that date, a Procedural Order was
issued requesting an update from Staff regarding the status of the application by September 29, 2006.

4. On September 29, 2006, Staff filed its Staff Report in this matter recommending
approval of Applicant's request to cancel its Certificate.

5. Staff indicated that Vivo was contacted by phone and that Mr. Robert Timothy Sefton, President, stated that Vivo never provided telecommunication services as authorized in Decision No. 63923, nor collected advances, deposits or prepayments.

6. Vivo never conducted business in Arizona, nor collected advances, deposits and/or prepayments; therefore, the notice requirement of A.A.C. R14-2-1107(B) should be waived under the unique circumstances of this case. Absent the unique facts presented in this case, we will strictly enforce the requirements set forth in A.A.C. R14-2-1107.

7. Staff stated that according to the Commission's Consumer Services Section, there have been no complaints or inquiries for Vivo. Therefore, Staff recommended that Vivo's request for cancellation of its Certificate be approved.

CONCLUSIONS OF LAW

1. Applicant is a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

3. The Commission has jurisdiction over Applicant and the subject matter of the application.

4. Staff's recommendations are reasonable and should be adopted.

5. The notice requirement of A.A.C. R14-2-1107(B) should be waived, under the unique circumstances of this case.

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ORDER

IT IS THEREFORE ORDERED that the Certificate of Convenience and Necessity granted to Vivo Communications-AZ, LLC in Decision No. 63923 shall be, and hereby is, cancelled.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this ____ day of _____, 2006.

BRIAN C. McNEIL
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

1 SERVICE LIST FOR: VIVO-AZ
2 DOCKET NO.: T-03973A-05-0591

3
4 Robert Timothy Sefton
300 E. Maple Road, Ste. 270
5 Birmingham, MI 48009
6 Christopher Kempley, Chief Counsel
Legal Division
7 ARIZONA CORPORATION COMMISSION
1200 West Washington Street
8 Phoenix, AZ 85007
9 Ernest G. Johnson, Director
Utilities Division
10 ARIZONA CORPORATION COMMISSION
1200 West Washington
11 Phoenix, AZ 85007
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COMMISSIONERS
JEFF HATCH-MILLER - Chairman
WILLIAM A. MUNDELL
MIKE GLEASON
KRISTIN K. MAYES
BARRY WONG



BRIAN C. MCNEIL
Executive Director

ARIZONA CORPORATION COMMISSION

DATE: OCTOBER 27, 2006

DOCKET NO: T-03191A-05-0019

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Amy Bjelland. The recommendation has been filed in the form of an Opinion and Order on:

VYCERA COMMUNICATIONS, INC.
(CC&N)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

NOVEMBER 6, 2006

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

NOVEMBER 21, 2006 and NOVEMBER 22, 2006

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250. For information about the Open Meeting, contact the Executive Secretary's Office at (602) 542-3931.


BRIAN C. MCNEIL
EXECUTIVE DIRECTOR

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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

JEFF HATCH-MILLER, Chairman
WILLIAM A. MUNDELL
MIKE GLEASON
KRISTIN K. MAYES
BARRY WONG

IN THE MATTER OF THE APPLICATION OF
VYCERA COMMUNICATIONS, INC. FOR A
CERTIFICATE OF CONVENIENCE AND
NECESSITY TO PROVIDE RESOLD AND
FACILITIES-BASED LOCAL EXCHANGE
SERVICES IN THE STATE OF ARIZONA AND
PETITION FOR COMPETITIVE
CLASSIFICATION OF PROPOSED SERVICES.

DOCKET NO. T-03141A-05-0019

DECISION NO. _____

OPINION AND ORDER

DATE OF HEARING: May 23, 2005 and September 6, 2006

PLACE OF HEARING: Phoenix, Arizona

ADMINISTRATIVE LAW JUDGE: Amanda Pope¹

APPEARANCES: Dale Dixon, Jr., Vice President, General Counsel, on
behalf of Vycera Communications, Inc.; and

David Ronald, Staff Attorney, and Janice M. Alward,
Assistant Chief Counsel, Legal Division, on behalf of
the Utilities Division of the Arizona Corporation
Commission.

BY THE COMMISSION:

* * * * *

Having considered the entire record herein and being fully advised in the premises, the
Commission finds, concludes, and orders that:

FINDINGS OF FACT

1. On January 12, 2005, Vycera Communications, Inc. ("Vycera" or "Applicant")
submitted to the Arizona Corporation Commission ("Commission") an application for a Certificate of
Convenience and Necessity ("Certificate" or "CC&N") to provide resold and facilities-based local

¹ Administrative Law Judge Amanda Pope conducted the original hearing in this matter, and Administrative Law Judge
Amy Bjelland conducted the September 6, 2006 hearing and drafted the Recommended Opinion and Order.

1 exchange telecommunications services within the State of Arizona. The application petitioned the
2 Commission for determination that its proposed services should be classified as competitive.

3 2. Vycera is organized under the laws of the State of California and is authorized to do
4 business in Arizona. The Commission granted Vycera (formerly known as Genesis
5 Communications) a CC&N to provide competitive interLATA/intraLATA resold telecommunications
6 services in Decision No. 60504 (November 25, 1997). Derek Gietzen is President and CEO of
7 Vycera; his wife, Thalia Gietzen, is Chief Financial Officer of Vycera. As Genesis Communications,
8 the company was founded with its core principle to provide "high quality, cost effectively priced
9 service for Spanish-speaking consumers."²

10 3. On March 31, 2005, the Commission's Utilities Division Staff ("Staff") filed a Staff
11 Report ("Initial Staff Report") recommending approval of Vycera's application subject to certain
12 conditions. The Initial Staff Report indicated that although Vycera had been involved in no formal
13 complaint proceedings, on July 8, 2004, the California Public Utilities Commission ("CPUC") issued
14 an Order Instituting Investigation ("OII") based upon customer complaints concerning Vycera's
15 unauthorized transfer of customers, or "slamming". According to Staff, the CPUC issued Decision
16 No. 05-03-004 on March 17, 2005, approving a settlement between Vycera and the CPUC's
17 Consumer Protection and Safety Division. The Decision includes provisions for a probationary
18 period of 3 years during which Vycera will be subject to CPUC Quality Assurance Procedures. The
19 Decision further noted that Vycera had undertaken numerous system enhancements designed to
20 prevent the occurrence of the types of problems identified in the OII.

21 4. On April 4, 2005, a Procedural Order was issued setting this matter for hearing on
22 June 8, 2005 and setting various procedural deadlines.

23 5. On April 12, 2005, Vycera submitted a request for an expedited hearing.

24 6. By Procedural Order dated April 12, 2005, Vycera's request was granted, and the
25 hearing in this matter was rescheduled for May 23, 2005.

26 7. On April 29, 2005, Applicant docketed an Affidavit of Publication that complied with
27

28 ² September 6, 2006 hearing Tr. at 8.

1 Commission rules.

2 8. On May 12, 2005, Vycera filed information relating to (1) its plan for including its
3 customers' telephone numbers in the ILEC's Directories and Directory Assistance databases; and (2)
4 its certification that all issues associated with the provision of 911 service have been resolved with
5 the emergency service providers.

6 9. On May 20, 2005, Vycera filed a statement indicating that it had entered into an
7 Interconnection Agreement and Master Services Agreement with Qwest on February 11, 2005, which
8 had been submitted to the Commission for approval.

9 10. On May 23, 2005, a full public hearing in this matter was held as scheduled. Dale
10 Dixon, Vice President of Regulatory Affairs and General Counsel, appeared on behalf of Vycera.
11 Staff appeared and was represented by counsel. The hearing was conducted before a duly authorized
12 Administrative Law Judge. Evidence was presented and testimony was taken. At the conclusion of
13 the hearing, the Administrative Law Judge took the matter under advisement.

14 11. On June 6, 2005, Vycera docketed a conforming tariff as recommended by the Initial
15 Staff Report.

16 12. On June 23, 2005, a Recommended Opinion and Order ("ROO") was issued and the
17 matter was placed on the July and August 2005 Open Meeting Agendas. The Commissioners
18 discussed the matter at the August Open Meeting, but did not vote to approve the Recommended
19 Opinion and Order and did not issue any decision in the matter.

20 13. On June 27, 2005, Vycera docketed a supplemental filing stating that it had obtained a
21 \$125,000 performance bond as recommended by the Initial Staff Report.

22 14. On August 29, 2005, Vycera docketed an Amended Application.

23 15. On October 11, 2005, Vycera requested a Procedural Order be issued setting the
24 matter for further evidentiary hearing.

25 16. On October 17, 2005, Vycera docketed supplemental information consisting of two
26 letters from the CPUC Staff.

27 17. On November 1, 2005, a Procedural Order was issued ordering Staff to conduct a
28 review of the Amended Application and the supplemental information, to conduct any additional

1 discovery necessary, and to file an updated Staff Report, no later than December 2, 2005.

2 18. Staff requested several extensions of time in order to allow for thorough review of the
3 amended application. These were granted by Procedural Order. Staff issued its Supplement to the
4 Staff Report ("Supplement") on April 7, 2006.

5 19. On April 21, 2006, a Procedural Order was issued setting this matter for hearing on
6 June 5, 2006 and setting various procedural deadlines, including a publication requirement by May 1,
7 2006.

8 20. On May 30, 2006, Vycera notified the Commission that it had not published notice of
9 the hearing in accordance with the April 21, 2006 Procedural Order. Vycera therefore requested that
10 the hearing be rescheduled in order to allow it to comply with publication requirements.

11 21. By Procedural Order issued June 1, 2006, the hearing in this matter was rescheduled to
12 September 6, 2006 and new procedural deadlines were set.

13 22. On June 23, 2006, Vycera docketed an Affidavit of Publication.

14 23. On September 6, 2006, a second full public hearing in this matter was held as
15 scheduled ("September 6, 2006 hearing"). Mr. Dixon appeared on behalf of Vycera. Staff appeared
16 and was represented by counsel. The September 6, 2006 hearing was conducted before a duly
17 authorized Administrative Law Judge. Evidence was presented and testimony was taken. At the
18 conclusion of the hearing, the matter was taken under advisement.

19 24. In its Supplement, Staff enumerated three issues of concern to the Commission, as
20 cited by Vycera in its Amended Application for Certificate: (1) Derek Gietzen's and Thalia Gietzen's
21 previous employment with Communications Telesystems International ("CTS"); (2) monitoring the
22 status of Vycera's compliance with the CPUC Consumer Protection and Safety Division's settlement
23 agreement; and (3) the OII's reference to the possibility that third-party verification tapes provided by
24 Vycera to the CPUC were altered or inaudible.

25 25. According to Staff, in May 1997, the CPUC found that CTS had committed 39,200
26 unauthorized switches, fined CTS \$19.6 million, and suspended CTS' operating authority for three
27
28

1 years.³

2 26. In its investigation Staff relied on the CPUC Staff's report that led the CPUC to issue
3 the OII, on the CPUC Order Approving the Settlement Agreement, and on information gathered in
4 discussions with the CPUC Staff.

5 **Timeline of Events**

6 27. In its Supplement, Staff provided a timeline of events, attached hereto as Exhibit A,
7 which is helpful in obtaining a broad view of the current procedural posture of this matter.

8 28. The timeline shows that Derek Gietzen began employment at CTS as Vice President
9 and General Manager of the long distance division in April 1993. Thalia Gietzen began her
10 employment with CTS in April 1993 as Chief Financial Officer. January 1994 was the start of the
11 period of complaints against CTS reported to the CPUC by PacBell. Derek Gietzen and Thalia
12 Gietzen subsequently left CTS in October and November 1994, respectively.

13 29. Complaints against CTS continued after the Gietzens departed the company, and
14 ultimately the CPUC issued a Decision in May 1997, suspending CTS' license to provide service in
15 California for a period of three years.

16 30. Vycera received a Certificate of Public Convenience and Necessity (California's
17 counterpart to Arizona's CC&N) ("CPCN") in February 1996.

18 31. The CPUC began documenting complaints against Vycera in January 2001, including
19 both dial tone slamming⁴ complaints reported by SBC and PIC disputes⁵ reported by SBC.

20 32. In October 2002, Vycera turned its focus from long distance to local exchange service.
21 Complaints documented by the CPUC, including those filed by SBC relating to dial tone slamming
22 and PIC disputes, ended in December 2003. The CPUC issued its OII based on these complaints in
23 July 2004.

24 33. Vycera and the CPUC Staff filed their Settlement with the CPUC for approval in
25 January 2005, and the CPUC approved the Settlement in March 2005.

26 ³ CPUC Decision No. 97-05-089.

27 ⁴ A "dial tone slam" is the industry term used to refer to an allegation that a subscriber's local telephone service carrier
was switched without the subscriber's authorization.

28 ⁵ A PIC dispute (Primary Interexchange Carrier dispute) is the terminology used by SBC referring to an allegation that a
subscriber's long distance or local toll carrier was switched without the subscriber's authorization.

1 **The CPUC's Order Instituting Investigation and Settlement**

2 34. According to Staff, the CPUC issued its OII after receiving 43 complaints about
3 Vycera in 2001, 34 in 2002, and 156 in 2003. At the September 6, 2006 hearing, Mr. Gietzen
4 acknowledged that 156 is quite a large number of complaints.⁶

5 35. In addition, during that same interval, from 2001 through 2003, SBC alleged that it
6 received approximately 11,000 dial tone slam complaints and complained to the CPUC about
7 approximately 10,000 PIC disputes attributable to Vycera. Although CPUC Staff used these numbers
8 in its OII Report, it did not rely on the numbers due to questions about their accuracy. When asked
9 about the number of customers Vycera had during that time relative to the number of complaints
10 alleged by SBC, Mr. Gietzen stated that, to his recollection, Vycera had 20,000 customers during
11 2003.⁷

12 36. According to Staff, consumers complained to the CPUC that Vycera's telemarketers
13 did not thoroughly inform them of the nature and extent of the products or services being marketed,
14 and often found that after purchase, the product or services they were being billed for were not
15 consistent with the products or services described by the telemarketers. Staff learned from the CPUC
16 Staff that typically, Vycera's telemarketers falsely promised prospective customers that their rates
17 would be lower with Vycera, although they were not. Consumers also complained that Vycera sales
18 people misrepresented themselves as representatives of the consumer's local telephone company, and
19 did not clearly state that they were calling on behalf of Vycera.

20 37. Mr. Gietzen testified at the September 6, 2006 hearing that problems began for Vycera
21 when it transitioned to providing local telecommunications service in 2003, although there was a time
22 lag of approximately four to six months from the time the CPUC began receiving complaints to the
23 time Vycera was notified of the complaints by the CPUC.⁸ Mr. Gietzen noted that internally, Vycera
24 began seeing increased customer attrition, increased call volume into its customer care center, and an
25 increase in its bad debt numbers, all of which Vycera believed was due to customer confusion during
26

27 ⁶ September 6, 2006 hearing Tr. at 16.

28 ⁷ *Id.* at 26.

⁸ *Id.*, pp.18, 19.

1 the sales process.⁹ He acknowledged that customers complained to Vycera that they were unaware
 2 that Vycera had requested and obtained their authorization to switch both local and long distance
 3 service, and testified that the problem was mainly due to customer confusion.¹⁰ Mr. Gietzen testified
 4 further that "part of [the misunderstanding by consumers] is cultural, I think. The market that we are
 5 dealing with, first and second generation Hispanics, they are, I believe that they are not typically used
 6 to having a choice of provider."¹¹ Vycera instituted internal changes in early 2004 intended to correct
 7 the problem; however, Mr. Gietzen did not account for complaints that began coming into the CPUC
 8 in January 2001, prior to Vycera's switch in focus to local service beginning in October 2002.

9 38. Mr. Gietzen blamed the very high number of dial tone slamming complaints and PIC
 10 disputes to manipulation of the dial tone slam and PIC dispute numbers by SBC, and gave an
 11 example of how such manipulation would take place: "[A] customer would call [SBC] to cancel and
 12 they would be coached, well, gosh, was that, Mrs. Garcia, was that a slam, because if it was a slam
 13 you can get a refund for your charges. And so things like that were happening."¹²

14 39. The CPUC Settlement made specific findings that "Vycera has taken measures and
 15 instituted policies to prevent its sales representatives from misrepresenting the pricing of its services
 16 to consumers...[and] from misrepresenting that Vycera is affiliated with any other
 17 telecommunications provider."¹³

18 40. Pursuant to the CPUC Settlement, Vycera agreed to pay a fine of \$200,000, with
 19 \$100,000 of the fine suspended during a three-year probationary period. With successful completion
 20 of Vycera's three-year probationary period, the suspension of the \$100,000 will become permanent.
 21 The probationary period includes a limit of no more than four consumer complaints per quarter by
 22

23 ⁹ September 6, 2006 hearing Tr. at 19.

24 ¹⁰ "[E]ven though we said local and talked about local and said that they would get a bill from us and all that good stuff,
 25 [the customers] just weren't getting it." (*Id.* at 20.) "There is a claim that Vycera sales reps misrepresented themselves as
 26 representatives of the local telephone company. And, again, I believe that that's largely consumer confusion." (*Id.* at 56.)
 27 "[T]here was some amount of confusion with the customers with regard to claiming that our representatives were saying
 they were from the local phone company. And I think that we believe that, in investigating it and looking at it, that they
 may have heard we are calling from Vycera Communications, we are a local telephone company, and maybe they just
 picked up on the local telephone company, assumed we were talking about the local telephone company rather than
 Vycera." (*Id.*)

¹¹ *Id.* at 69.

¹² *Id.*, pp. 25, 26.

¹³ CPUC Settlement Agreement, pp. 3, 4.

Vycera customers to the CPUC. Vycera provided documentation at the September 6, 2006 hearing of its compliance with the CPUC Settlement for the period of time from January 2005 through April 2006. During that time, Vycera had the following number of complaints¹⁴:

1/2005 through 3/2005	2 slamming complaints
4/2005 through 6/2005	0 complaints
7/2005 through 9/2005	1 slamming complaint
10/2005 through 12/2005	0 complaints
1/2006 through 3/2006	0 complaints
4/2006 through 6/2006	0 complaints

Vycera's probationary period in California ends in March 2008.¹⁵

Gietzens' Previous Employment with CTS

41. Also of concern to the CPUC Staff was that it had asked Vycera in its first data request dated December 12, 2001, to identify any officer or directors who previously had been officers or directors of any other telecommunications company. Mr. Gietzen testified "Our regulatory firm answered that as no."¹⁶

42. Vycera asserted in its Amended Application that any conclusion that the Gietzens concealed their previous employment with CTS from the CPUC is contradicted by its Settlement with the CPUC, which stipulated that the Gietzens' former employment by CTS was disclosed to the CPUC, prior to the erroneous 2001 filing, in Vycera's 1995 application for a CPCN and in Vycera's 1995 Petition for Authority to provide competitive local exchange service. Mr. Gietzen testified, however, that Vycera had raised the question at some point of whether he and Mrs. Gietzen fit the legal definition of officer or director.¹⁷ Ultimately it was settled that Mr. and Mrs. Gietzen were, in fact, officers of CTS, and therefore should have included this information in their application. Mr. Gietzen testified that "[C]ertainly anything that we file I should assume and I do assume ultimate responsibility for that. And I would again, like I sort of indicated, but clearly I was not trying to put the blame on our law firm in DC about that filing, because I am sure that the filing came to me for approval and signature before it was filed and I just missed it, that there was, you know, that we were

¹⁴ Exh. A-2.

¹⁵ September 6, 2006 hearing Tr. at 92.

¹⁶ *Id.* at 34.

¹⁷ *Id.* at 34.

1 not -- that that question was answered incorrectly. So certainly I take responsibility for having missed
2 that in my review of [the law firm's] filing."¹⁸

3 43. Consistent with the theme of Mr. Gietzen's accountability, the following exchange
4 took place during Mr. Gietzen's cross-examination by Staff at the September 6, 2006 hearing:

5 Q. Who is, who in your view is ultimately responsible for Vycera's
6 compliance with the CC&N and the conditions imposed on that CC&N
7 here in Arizona?

8 A. That would be me ultimately.

9 Q. And why is that?

10 A. The buck stops here. I mean, honestly, we are not a big company. And
11 so all of those areas of responsibility report up to me. And we keep a very
12 close watch.¹⁹

13 44. Mr. Gietzen also addressed "how serious Vycera is about working with the
14 Commission and Staff related to the Arizona Commissioners' concerns" and his previous testimony
15 relating to Vycera's Washington, DC, regulatory counsel filing its application for CPCN without the
16 correct information that both he and Mrs. Gietzen had been officers for another telecommunications
17 company.²⁰ Although he referred to himself as the accountable party on behalf of Vycera more than
18 once,²¹ he went on to observe that "it was a filing that [Vycera's lawyers] had made for us on our
19 behalf."²² At hearing, Mr. Gietzen testified neither he nor his wife was drawn into the CPUC's
20 investigation of CTS, which he attributed to the fact that they "left long before [the investigation]
21 started."²³ Complaints about CTS began coming in to the CPUC in January 1994; Mr. and Mrs.
22 Gietzen did not leave CTS until October and November 1994, respectively.

23 Third Party Verification ("TPV") Tapes

24 45. Vycera stated in its Amended Application that it did not alter TPV tapes. Vycera
25 refers to the CPUC Settlement to support this contention.

26 ¹⁸ September 6, 2006 hearing Tr. at 46, 47.

27 ¹⁹ *Id.* at 42.

28 ²⁰ *Id.* at 43, 44.

²¹ "Obviously we are ultimately responsible for whatever [Vycera's lawyers] file;" (*Id.* at 44) "certainly anything that we
file I should assume and I do assume ultimate responsibility for that." (*Id.* at 46.).

²² *Id.* at 44, 45.

²³ *Id.* at 34.

46. According to the CPUC Staff's report, Vycera's TPV company recorded a potential subscriber's name, and then, in order to verify the subscriber's intent to switch telecommunications provider, the subscriber was required to press the number "2" on the telephone to verify that the information provided by an automated voice was correct, and "4" to decline. Vycera did not verify the subscriber's intent to switch orally as required by CPUC rules, which provide that the TPV company must obtain and record the subscriber's oral confirmation. In addition, the option to decline was not provided at every step of the automated verification process, but only after certain products or services were mentioned.

47. When Vycera provided TPV tapes to the CPUC, the CPUC Staff found that the tapes sounded as if they had been doctored or were functionally inaudible. Mr. Gietzen explained at September 6, 2006 hearing that Vycera used an automated confirmation that would record a customer's response at certain points, rather than recording the entire block of the outgoing message.²⁴ Vycera contracted with a third party, over whom, Mr. Gietzen asserted, Vycera had no control, and the TPV company would record different pieces of the automated confirmation process, which led the CPUC Staff to believe there may have been tampering with the tapes.²⁵

48. After Vycera explained the process of how the TPV tapes were compiled by the third party TPV company, Mr. Gietzen stated that the CPUC Staff was satisfied with the integrity of the process.²⁶ Vycera did, at the CPUC Staff's request, ask its TPV company to improve the quality and consistency of the tapes.²⁷ Mr. Gietzen testified that Vycera would be using the same company for TPV in Arizona.²⁸

Staff Recommendations

49. In its Initial Staff Report, Staff recommended that Vycera's Application for a Certificate to provide competitive resold and facilities-based local exchange telecommunications services be granted subject to the following conditions:

- (a) that, unless it provides services solely through the use of its own facilities,

²⁴ September 6, 2006 hearing Tr. at 52.

²⁵ *Id.* at 52, 53.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

1 Vycera be ordered to procure an Interconnection Agreement before being
2 allowed to offer local exchange service. The interconnection agreement should
3 be procured within 365 days of the effective date of the Order in this matter or
4 30 days prior to the provision of service, whichever comes first, and must
5 remain in effect until further order of the Commission. If the Applicant
6 provides services solely through the use of its own facilities, no other
7 information shall be required once the Applicant informs the Commission of
8 that fact by a letter with the Commission's Docket Control Center under the
9 same timeframe and provision of service criteria as above;

- 10 (b) that Vycera be ordered to pursue permanent number portability arrangements
11 with other LECs pursuant to Commission rules, federal laws and federal rules;
- 12 (c) that Vycera be ordered to abide by and participate in the AUSF mechanism
13 instituted in Decision No. 59623, dated April 24, 1996 (Docket No. RT-
14 00000E-95-0498);
- 15 (d) that Vycera be ordered to abide by the quality of service standards that were
16 approved by the Commission for Qwest in Docket No. T-0151B-93-0183;
- 17 (e) that in areas where it is the sole provider of local exchange service facilities,
18 Vycera be ordered to provide customers with access to alternative providers of
19 service pursuant to the provisions of Commission rules, federal laws and
20 federal rules;
- 21 (f) that Vycera be ordered to abide by all the Commission decisions and policies
22 regarding CLASS services;
- 23 (g) that Vycera be ordered to provide 2-PIC equal access;
- 24 (h) that Vycera be required to notify the Commission immediately upon changes
25 to its name, address or telephone number;
- 26 (i) that Vycera be ordered to comply with all Commission rules, orders, and other
27 requirements relevant to the provision of intrastate telecommunications
28 service;
- (j) that Vycera be ordered to maintain its accounts and records as required by the
Commission;
- (k) that Vycera be ordered to file with the Commission all financial and other
reports that the Commission may require, and in a form and at such times as
the Commission may designate;
- (l) that Vycera be ordered to maintain on file with the Commission all current
tariffs and rates, and any service standards that the Commission may require;
- (m) that Vycera be ordered to cooperate with Commission investigations including,
but not limited to, customer complaints;
- (n) that Vycera be subject to the Commission's rules and the 1996
Telecommunications Act to the extent that they apply to CLECs;
- (o) that pursuant to A.A.C. R14-2-1107, Vycera be ordered to file an application
with the Commission should it desire to discontinue service. The Applicant
should be required to notify each of its local exchange customers and the

Commission 60 days prior to filing such application to discontinue service, and any failure to do so should result in forfeiture of Vycera's performance bond;

- (p) that Vycera agree to abide by the Commission's slamming and cramming rules outlined in Articles 19 and 20 of Title 14, Section 2 of the Arizona Administrative Code; and
- (q) that Vycera keep the Commission informed of its probationary status resulting from the slamming matter described in Section 4 of the Initial Staff Report.

50. At the May 23, 2005 hearing, Vycera requested that Staff's recommendations with regard to the filing of a conforming tariff and proof of performance bond be amended such that it be required to file those documents within 15 days rather than the standard 30 days, and Staff testified that it has no objection to amending its recommendations accordingly.

51. Additionally, Staff recommended in its Initial Staff Report that Vycera's application for a CC&N to provide intrastate telecommunications services should be granted subject to the following conditions:

- (a) Vycera be ordered to file conforming tariffs within 365 days from the date of an Order in this matter or 15 days prior to providing service, whichever occurs first, and in accordance with the Decision; and
- (b) If the above timeframe is not met, that Vycera's CC&N should become null and void without further Order of the Commission and no extensions for compliance should be granted;

52. In order to protect Vycera's customers, Staff recommended:

- (a) That Vycera should be ordered to procure a performance bond equal to \$125,000. The minimum bond amount of \$125,000 should be increased if at any time it would be insufficient to cover prepayments or deposits collected from Vycera's customers. The bond amount should be increased in increments of \$62,500 whenever the total amount of the advances, deposits and prepayments is within \$12,500 of the bond amount;
- (b) That Vycera should docket proof of the performance bond within 365 days of the effective date of this Order or 15 days prior to the provision of service, whichever comes first, and must remain in effect until further Order of the Commission; and
- (c) If the above timeframe is not met, that Vycera's CC&N should become null and void without further Order of the Commission and no extensions for compliance should be granted.

53. Staff's Supplement recommended approval of Vycera's application provided that the Decision required compliance with all of the recommended conditions of the Initial Staff Report, and additionally, with all of the conditions contained in the Vycera/CPUC Settlement Agreement. The Settlement Agreement provides, in part, for:

- (a) A disposition of specific issues and Vycera's confirmation that it has instituted and will maintain measures and policies designed to prevent improper practices relating to representations regarding economic savings to the consumer, representations regarding affiliation with local phone companies, use of a partially push button response TPV system, Vycera's provision of partially inaudible TPV recordings to the CPUC, automatic inclusion of a wire maintenance program, written notice of change in service provider, Derek and Thalia Gietzen's former employment with CTS, and acceptance of service offers from unauthorized persons;
- (b) A probationary period which ends in March 2008, with a quality assurance program consisting of quarterly review by CPUC Staff of consumer complaints against Vycera and a penalty of \$500 for each complaint in excess of four per quarter, with one additional permissible complaint per quarter allowed for every additional 2,000 sales per quarter in excess of 7,000 made by Vycera; and
- (c) System enhancements instituted and maintained by Vycera designed to ensure customer satisfaction, increase customer retention, address proactively potential areas of misunderstanding or complaint, and prevent the occurrence of the types of problems identified in the OII.

54. Staff stated that it did not intend that the provisions related to the fines imposed by the CPUC apply; however, Staff did intend that the penalties related to complaints in excess of the allowable number during the probationary period apply.

Discussion

55. Vycera claimed in its Amended Application that it would be unjust and unreasonable to presume unlawful conduct based solely on previous association. However, it is not unjust, nor unreasonable, to view past actions as part of a pattern of conduct relevant to whether a utility is a fit and proper entity.

56. Mr. Gietzen's own words render his acknowledgement of his accountability almost meaningless. Although he repeatedly testified that he accepted, and would continue to accept, accountability for Vycera's filings and issues, his credibility was undermined by repeated

1 contradictory statements. He testified that the CPUC filing which failed to correctly impart the
2 information that the Gietzens had been officers of a telecommunications company previously was the
3 fault of Vycera's lawyers.²⁹ He attributed the dial tone slamming and PIC disputes to consumer
4 manipulation by SBC.³⁰ He ascribed the complaints by consumers who received services they were
5 not aware they ordered, or who were charged more for services than they were originally quoted by
6 Vycera, to consumer misunderstandings or cultural differences.³¹ He testified that Vycera had no
7 control over how the TPV company hired by Vycera conducted itself.³²

8 57. Even taking into account the probation track record of Vycera in California and in
9 other states in which it operates, the multitude of prior errors and the seriousness of the cited
10 violations, as well as the recency of these incidents, lead us to conclude that Vycera is not an entity
11 that should be granted a CC&N to operate in Arizona.

12 58. We do not find granting Vycera a CC&N to provide resold and facilities-based local
13 exchange service in Arizona to be in the public interest.

14 CONCLUSIONS OF LAW

15 1. Applicant is a public service corporation within the meaning of Article XV of the
16 Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

17 2. The Commission has jurisdiction over Applicant and the subject matter of the
18 Application.

19 3. Notice of the Application was given in accordance with the law.

20 4. A.R.S. § 40-282 allows a telecommunications company to file an application for a
21 Certificate to provide competitive telecommunications services.

22 5. Applicant is not a fit and proper entity to receive a Certificate authorizing it to provide
23 competitive resold and facilities-based local exchange telecommunications services in Arizona.

24
25
26
27 ²⁹ September 6, 2006 hearing Tr. at 34.

³⁰ *Id.* at 25, 26.

³¹ *Id.* at 69.

³² *Id.* at 53.

ORDER

IT IS THEREFORE ORDERED that the Application of Vycera Communications, Inc. for a Certificate of Convenience and Necessity for authority to provide competitive resold and facilities-based local exchange telecommunications services in Arizona shall be, and is hereby, denied.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this ____ day of _____, 2006.

BRIAN C. McNEIL
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

1 SERVICE LIST FOR:

VYCERA COMMUNICATIONS, INC.

2 DOCKET NO.:

T-03141A-05-0019

3 R. Dale Dixon, Jr.
4 Vycera Communications, Inc.
5 12750 High Bluff Drive
6 Suite 200
7 San Diego, California 92130

8 Christopher Kempley, Chief Counsel
9 Legal Division
10 ARIZONA CORPORATION COMMISSION
11 1200 West Washington Street
12 Phoenix, Arizona 85007

13 Ernest Johnson, Director
14 Utilities Division
15 ARIZONA CORPORATION COMMISSION
16 1200 West Washington Street
17 Phoenix, Arizona 85007
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

Time Line

September 1992

Communications TeleSystems International is authorized by the CPUC to provide service

June 1993

Tim Miranda, Vycera's current Vice President of Sales and Marketing, begins employment at CTS

April 1993

Derek Gietzen begins employment at CTS as Vice President and General Manager of the CTS long distance division

Thalia Gietzen begins employment at CTS as Chief Financial Officer

January 1994

Start of the period of complaints against CTS reported to CPUC by PacBell

October 1994

Derek Gietzen leaves CTS

November 1994

Thalia Gietzen leaves CTS

December 1994

Tim Miranda, Vycera's current Vice President of Sales and Marketing, leaves CTS

January 1995

Start of the period of complaints against CTS reported to CPUC by GTEC

March 1995

CTS first meeting with CPUC CAB to discuss steps that CTS took to fix its problems

June 1995

Vycera issued CPCN to provide interexchange service

January 1996

Full investigation of CTS by CPUC began

February 1996

Vycera issued CPCN to provide resold local exchange service

March 1996

End of the period of complaints against CTS reported to CPUC by PacBell and GTEC

May 1997

CTS final Decision issued by CPUC
CTS CPUC license suspended for three years

January 2001

Beginning of the period of complaints against Vycera documented by the CPUC
Beginning of the period of dial tone slamming complaints reported by SBC
Beginning of the period of PIC disputes reported by SBC

October 2002

Vycera began focusing primarily on local exchange service

December 2003

End of the period of complaints against Vycera documented by the CPUC
End of the period of dial tone slamming complaints reported by SBC
End of the period of PIC disputes reported by SBC

July 2004

California OII issued

January 2005

Vycera/CPUC Staff Settlement filed with Commission for approval

March 2005

Vycera/CPUC Staff Settlement approved by the CPUC

COMMISSIONERS
JEFF HATCH-MILLER - Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES



BRIAN C. McNEIL
Executive Director

ARIZONA CORPORATION COMMISSION

DATE: November 18, 2005

DOCKET NO: W-01212A-05-0606

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Amy Bjelland. The recommendation has been filed in the form of an Order on:

VALENCIA WATER COMPANY, INC.
(FINANCING)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00 p.m.** on or before:

NOVEMBER 28, 2005

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

DECEMBER 6 AND 7, 2005

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.


BRIAN C. McNEIL
EXECUTIVE DIRECTOR

1
2 **BEFORE THE ARIZONA CORPORATION COMMISSION**

3 COMMISSIONERS

4 JEFF HATCH-MILLER Chairman
5 WILLIAM A. MUNDELL
6 MARC SPITZER
7 MIKE GLEASON
8 KRISTIN K. MAYES

9
10
11 IN THE MATTER OF THE APPLICATION OF
12 VALENCIA WATER COMPANY, INC. FOR
13 AUTHORITY TO ISSUE DEBT.

DOCKET NO. W-01212A-05-0606

DECISION NO. _____

14 ORDER

15 Open Meeting
16 December 6, 2005
17 Phoenix, Arizona

18 **BY THE COMMISSION:**

19 On August 24, 2005, Valencia Water Company, Inc. ("Applicant") filed with the Arizona
20 Corporation Commission ("Commission") an application requesting authorization to issue long-term
21 debt to the Water Infrastructure Financing Authority ("WIFA") in an amount not to exceed
22 \$2,831,000.

23 On October 19, 2005, Applicant filed certification that it had provided notice of the
24 application by publishing in a newspaper of general circulation.

25 On November 7, 2005, the Commission's Utilities Division Staff ("Staff") filed its Staff
26 Report, recommending approval of the application.

27 * * * * *

28 Having considered the entire record herein and being fully advised in the premises, the
Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

FINDINGS OF FACT

1. Pursuant to authority granted by the Commission, Applicant is an Arizona corporation
that provides water service in and around Buckeye, Maricopa County, Arizona.

2. On August 24, 2005, Applicant, as authorized by its Board of Directors, filed with the

1 Commission an application requesting authorization to issue long-term debt to WIFA in an amount
2 not to exceed \$2,831,000.

3 3. On October 19, 2005, Applicant filed certification that it caused notice of the
4 application to be published in the *West Valley View*, a newspaper of general circulation in Avondale,
5 Buckeye, Goodyear, Litchfield Park and Tolleson, Arizona.

6 4. Applicant's request for issuance of debt arises from rules established by the United
7 States Environmental Protection Agency ("EPA") that require the maximum contaminant level for
8 arsenic in potable water to be reduced from 50 parts per billion ("ppb") to 10 ppb, effective January
9 23, 2006.

10 5. The proposed financing will be used for the construction of a water treatment plant to
11 remove arsenic from Applicant's water system in order to meet the EPA and Arizona Department of
12 Environmental Quality ("ADEQ") January 23, 2006 deadline for compliance.

13 6. On November 7, 2005, Staff filed its Staff Report, recommending approval of the
14 application.

15 7. On November 14, 2005, Staff filed its Notice of Errata for its Staff Report in this
16 matter.

17 8. Staff stated that it examined the construction plans and estimated costs for Applicant's
18 water treatment project and found them to be reasonable and appropriate.

19 9. Staff stated that the proposed financing is for a 20-year loan which is to be amortized
20 at an estimated interest rate of 5.85 percent.

21 10. Staff performed an analysis of Applicant's financial statements for the twelve-month
22 period ended December 31, 2004; however, those financial statements did not provide an accurate
23 representation of ongoing operating results because Applicant's customers have since increased by
24 almost half, from approximately 1,900 to almost 3,000. Subsequently, Applicant provided Staff
25 updated information projecting operating results for the twelve months ending December 31, 2005
26 with actual financial results through August 2005, along with projections of operating expenses for
27
28

1 the proposed plant. Staff reviewed the updated information and tested¹ the Applicant's projections
2 and pro forma adjustments. Staff accepted only the Applicant's projections that pertain to the
3 operation of the arsenic treatment plant for its analysis.

4 11. For the period ending December 31, 2005, Applicant's capital structure is projected to
5 consist of 1.53 percent short-term debt, 13.30 percent long-term debt, and 85.17 percent equity.

6 12. Staff's analysis showed that if Applicant were to draw the entire \$2,831,000, the
7 resulting pro forma capital structure would consist of approximately 2.17 percent short-term debt,
8 68.88 percent long-term debt and 28.95 percent equity.

9 13. The Debt Service Coverage ("DSC") ratio represents the number of times internally
10 generated cash will cover required principal and interest payments on long-term debt. A DSC ratio
11 greater than 1.0 means that operating cash flow is sufficient to cover debt obligations, A DSC less
12 than 1.0 means that debt service obligations cannot be met from operations and that another source of
13 funds is needed to avoid default.

14 14. The Times Interest Earned Ratio ("TIER") represents the number of times earnings
15 will cover interest expense on short-term and long-term debt. A TIER greater than 1.0 means that
16 operating income is greater than interest expense. A TIER of less than 1.0 is not sustainable in the
17 long term but does not necessarily mean that debt obligations cannot be met in the short term.

18 15. Based on its analysis of the projected 2005 financial statements, Staff determined that
19 the pro forma effect of Applicant's proposed \$2,831,000 loan if fully drawn would be a lowering of
20 the Applicant's TIER from 25.78 to 1.53 and a lowering of the Applicant's DSC from 13.88 to 1.79.
21 Staff concluded that the pro forma TIER and DSC ratios show that the Applicant has adequate cash
22 flow to make interest payments on the proposed debt².

23 16. Applicant seeks WIFA financing approval for arsenic treatment of four current
24 operating well sites and four additional well sites scheduled to come on-line in February 2006. The
25 current arsenic levels of these wells range from 14 ppb to 38 ppb. Applicant plans to install FlexSorb
26

27 ¹ Staff compared Applicant's projected September 2005 revenue (i.e., \$110,000) to its actual revenue (i.e., \$157,000) and
concluded that the Applicant's revenue projections are not overstated.

28 ² Calculation reflects the current interest rate of 6.56 percent on the proposed loan. WIFA interest rate calculation for this
loan: (Prime Rate + 2%) x Subsidy Rate = (6.75% + 2%) x .75 = 6.56%.

1 Modular Sorption Systems as water treatment systems that use ArsenX media to remove arsenic.
2 ArsenX is a new hybrid arsenic removal media that uses nano-particle technology to combine iron
3 chemistry and plastic bead durability.

4 17. A Staff engineer reviewed the Applicant's proposal and found the estimated project
5 costs provided by the Applicant to be reasonable and appropriate. Staff further stated that no "used
6 and useful" determination was made and no conclusions should be inferred for ratemaking or rate
7 base purposes.

8 18. Staff concluded that the capital structure that would result from the incurrence of the
9 \$2,831,000 proposed debt is acceptable in the short-term. However, Staff believes that this capital
10 structure is outside the desirable range for the long-term.

11 19. Based on Staff's concerns for Applicant's long term capital structure, Staff
12 recommends approval of the Applicant's application for authorization to issue long-term debt to
13 WIFA in an amount not to exceed \$2,831,000 subject to the following condition: that if and when
14 equity falls below 40 percent of total capital, the Applicant is prohibited from distributing more than
15 25 percent of each year's earnings or distributing assets to principals via salaries, management fees,
16 or otherwise, in excess of current levels adjusted for changes in the Consumer Price Index.

17 20. Because an allowance for the property tax expense of Applicant is included in the
18 Company's rates and will be collected from its customers, the Commission seeks assurances from the
19 Company that any taxes collected from ratepayers have been remitted to the appropriate taxing
20 authority. It has come to the Commission's attention that a number of water companies have been
21 unwilling or unable to fulfill their obligation to pay the taxes that were collected from ratepayers,
22 some for as many as twenty years. It is reasonable, therefore, that as a preventative measure
23 Applicant annually file, as part of its annual report, an affidavit with the Utilities Division attesting
24 that the company is current in paying its property taxes in Arizona.

25 21. Staff's recommendations are reasonable and we will require that the Applicant file an
26 annual certification that it is in compliance with the condition recommended by Staff in Finding of
27 Fact No. 19.

CONCLUSIONS OF LAW

1
2 1. Applicant is a public service corporation within the meaning of Article XV of the
3 Arizona Constitution and A.R.S. §§ 40-285, 40-301 and 40-302.

4 2. The Commission has jurisdiction over Applicant and the subject matter of the
5 application.

6 3. Notice of the application was given in accordance with the law.

7 4. The financing approved herein is for lawful purposes within Applicant's corporate
8 powers, is compatible with the public interest, with sound financial practices, and with the proper
9 performance by Applicant of service as a public service corporation, and will not impair Applicant's
10 ability to perform that service.

11 5. The financing approved herein is for the purposes stated in the application and is
12 reasonably necessary for those purposes, and such purposes are not, wholly or in part, reasonably
13 chargeable to operating expenses or to income.

ORDER

14
15 IT IS THEREFORE ORDERED that the application of Valencia Water Company, Inc. for
16 authority to issue long-term debt to the Water Infrastructure Financing Authority in an amount not to
17 exceed \$2,831,000 is hereby approved subject to the condition that if and when equity falls below 40
18 percent of total capital, the Applicant is prohibited from distributing more than 25 percent of each
19 year's earnings or distributing assets to principals via salaries, management fees, or otherwise in
20 excess of current levels, adjusted for changes in the Consumer Price Index.

21 IT IS FURTHER ORDERED that Valencia Water Company, Inc. shall file certification
22 within 365 days of this Decision, and annually thereafter, with the Commission's Docket Control, as
23 a compliance item in this docket, that it is in compliance with the equity and earnings
24 recommendation of Staff as set forth in Finding of Fact No. 19, above.

25 IT IS FURTHER ORDERED that Valencia Water Company is hereby authorized to engage in
26 any transactions and to execute any documents necessary to effectuate the authorization granted
27 herein.
28

1 IT IS FURTHER ORDERED that such authority is expressly contingent upon Valencia Water
2 Company's use of the proceeds for the purposes set forth in its application.

3 IT IS FURTHER ORDERED that approval of the financing set forth herein does not
4 constitute or imply approval or disapproval by the Commission of any particular expenditure of the
5 proceeds derived thereby for purposes of establishing just and reasonable rates.

6 IT IS FURTHER ORDERED that Valencia Water Company shall file with the Commission
7 copies of all executed financing documents setting forth the terms of the financing, within 30 days of
8 obtaining such financing.

9 IT IS FURTHER ORDERED that Valencia Water Company, Inc. shall annually file as part of
10 its annual report, an affidavit with the Utilities Division attesting that the Company is current in
11 paying its property taxes in Arizona.

12 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

13 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

14
15
16 CHAIRMAN

COMMISSIONER

17
18 COMMISSIONER

COMMISSIONER

COMMISSIONER

19 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
20 Director of the Arizona Corporation Commission, have
21 hereunto set my hand and caused the official seal of the
22 Commission to be affixed at the Capitol, in the City of Phoenix,
23 this ____ day of _____, 2005.

24 BRIAN C. McNEIL
EXECUTIVE DIRECTOR

25 DISSENT _____

26 DISSENT _____

27 AB:mj

28

1 SERVICE LIST FOR:

VALENCIA WATER COMPANY, INC.

2 DOCKET NO.:

W-01212A-05-0606

3 William P. Sullivan

4 CURTIS, GOODWIN, SULLIVAN, UDALL & SCHWAB

5 2712 North Seventh Street

6 Phoenix, AZ 85006

7 John Mihlik

8 VALENCIA WATER COMPANY, INC.

9 3800 North Central Avenue, Ste. 770

10 Phoenix, AZ 85012

11 Christopher Kempley, Chief Counsel

12 Legal Division

13 ARIZONA CORPORATION COMMISSION

14 1200 West Washington Street

15 Phoenix, Arizona 85007

16 Ernest G. Johnson, Director

17 Utilities Division

18 ARIZONA CORPORATION COMMISSION

19 1200 West Washington Street

20 Phoenix, Arizona 85007

COMMISSIONERS
JEFF HATCH-MILLER - Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES



BRIAN C. McNEIL
Executive Director

ARIZONA CORPORATION COMMISSION

DATE: June 2, 2006

DOCKET NO.: T-03475A-06-0104

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Amy Bjelland. The recommendation has been filed in the form of an Order on:

ONE POINT COMMUNICATIONS – COLORADO, LLC dba VERIZON AVENUE

(CC&N CANCELLATION)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00 p.m.** on or before:

JUNE 12, 2006

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

JUNE 27 AND 28, 2006

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.


BRIAN C. McNEIL
EXECUTIVE DIRECTOR

1
2 **BEFORE THE ARIZONA CORPORATION COMMISSION**

3 COMMISSIONERS

4 JEFF HATCH-MILLER Chairman
5 WILLIAM A. MUNDELL
6 MARC SPITZER
7 MIKE GLEASON
8 KRISTIN K. MAYES

9 IN THE MATTER OF THE APPLICATION OF
10 ONE POINT COMMUNICATIONS – COLORADO,
11 LLC dba VERIZON AVENUE TO CANCEL ITS
12 CERTIFICATE OF CONVENIENCE AND
13 NECESSITY FOR RESOLD LOCAL EXCHANGE
14 AND LONG DISTANCE, FACILITIES-BASED
15 LOCAL EXCHANGE AND INDEPENDENT
16 LONG DISTANCE CARRIER
17 TELECOMMUNICATIONS SERVICES.

DOCKET NO. T-03475A-06-0104

DECISION NO. _____

ORDER

12 Open Meeting
13 June 27 and 28, 2006
14 Phoenix, Arizona

15 **BY THE COMMISSION:**

16 Having considered the entire record herein and being fully advised in the premises, the
17 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

18 **FINDINGS OF FACT**

19 1. On November 19, 1999, the Commission issued Decision No. 62086 which granted to
20 OnePoint Communications – Colorado, LLC dba Verizon Avenue ("OnePoint") a Certificate of
21 Convenience and Necessity ("Certificate") to provide competitive facilities-based and resale
22 intrastate interLATA and intraLATA telecommunications services and local exchange services
23 within Arizona.

24 2. On February 17, 2006, OnePoint filed a Notice of Filing to inform the Commission
25 that it would be filing an application to discontinue services and to cancel its Certificate with a
26 proposed effective date of May 1, 2006¹. OnePoint wishes to exit the resale of voice services

27 ¹ OnePoint wishes to expedite the processing of its Arizona application and approval of its proposed May 1, 2006
28 termination date in order to coordinate its effort in Arizona with 13 other states across the nation within which it provides
the same telecommunications services as those provided in Arizona.

1 businesses on a nationwide basis due to the increased focus on broadband offerings, which has
2 rendered OnePoint's narrowband voice offerings less competitive and attractive. In its May 19, 2006
3 Staff Report, the Commission's Utilities Division ("Staff") recommended approval of OnePoint's
4 application for cancellation of its Certificate.

5 3. OnePoint stated that it will refund any and all deposits in accordance with its tariff.
6 After service is terminated, any deposits will be netted against outstanding charges, and if a balance
7 is due to the customer, a check will be mailed to the customer within 45 days of the termination date
8 of service. According to Staff, as of May 10, 2006, there are no outstanding customer deposits held
9 by OnePoint.

10 4. On February 23, 2006, OnePoint filed a Request for Waiver of a provision of Decision
11 No. 62086 which required OnePoint to notify each of its customers 60 days prior to filing an
12 application to discontinue service. Absent a waiver, OnePoint would be required to wait until April
13 18, 2006 (60 days from the date it filed its Notice of Filing on February 17, 2006) to file its
14 application to discontinue service and cancel its Certificate. OnePoint mailed a letter to all of its
15 customers on February 16, 2006, 74 days in advance of the proposed discontinuance of the services
16 planned for May 1, 2006. OnePoint included a list of 70 alternate providers with the letter that could
17 provide service to customers in Arizona. OnePoint issued a second notice to its customers on
18 February 28, 2006, and a third notice on March 24, 2006. OnePoint believes that this effort fulfills
19 the Commission's intent by providing substantially more notice to customers than is required by
20 Decision No. 62086. Staff recommended that OnePoint's request for a waiver of this requirement be
21 granted.

22 5. On February 24, 2006, OnePoint submitted its Application to Discontinue Services
23 and to Cancel Certificate of Convenience and Necessity. As of February 24, 2006, OnePoint reported
24 that it provided resold residential local exchange and long distance services to approximately 80
25 customers in Phoenix and Tucson. As of May 10, 2006, 22 OnePoint customers in Arizona had not
26 selected an alternate service provider. Of the 22 remaining customers, 16 customers that live in the
27 Phoenix Metropolitan Area receive local service and 11 of those customers receive long distance
28 service. Six customers live in the Tucson Metropolitan Area and receive local service; four of these

1 receive long distance service. OnePoint does not provide telecommunications services to business
2 customers and does not have any contracts with its customers.

3 6. April 7, 2006, OnePoint filed a Notice of Filing Affidavits of Publication.

4 7. OnePoint's performance bond is still valid and is in the amount of \$235,000.

5 8. OnePoint's operations for providing telecommunications services to customers in
6 Arizona are located in Virginia. OnePoint does not maintain any offices, facilities or employees in
7 Arizona. Therefore, there is no impact to any facilities or employees in Arizona.

8 9. The Consumer Services Section of the Utilities Division reports that there have been
9 10 complaints against OnePoint from 2003 through February 28, 2006. Consumer Services stated
10 that OnePoint is in good standing with the Corporations Division of the Commission. According to
11 the Compliance and Enforcement Section of the Utilities Division, OnePoint does not have any
12 compliance delinquencies.

13 10. Staff stated that there are numerous other carriers offering similar services in Arizona.
14 Staff believes that approval of the application is in the public interest. Staff's recommendations are
15 reasonable and should be adopted.

16 CONCLUSIONS OF LAW

17 1. Applicant is a public service corporation within the meaning of Article XV of the
18 Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

19 2. The Commission has jurisdiction over Applicant and the subject matter of the
20 application.

21 3. Notice of the application was given in accordance with the law.

22 4. Approval of the application is in the public interest.

23 ORDER

24 IT IS THEREFORE ORDERED that the application of OnePoint Communications –
25 Colorado, LLC dba Verizon Avenue to cancel its Certificate of Convenience and Necessity for
26 Resold Local Exchange and Long Distance, Facilities-based Local Exchange and Independent Long
27 Distance Carrier Telecommunications Services shall be, and hereby is, granted, subject to the
28 provisions contained herein.

1 IT IS FURTHER ORDERED that the cancellation of the Certificate of Convenience and
2 Necessity held by OnePoint Communications – Colorado, LLC dba Verizon Avenue shall be
3 effective 45 days after issuance of this Decision.

4 IT IS FURTHER ORDERED that OnePoint Communications – Colorado, LLC dba Verizon
5 Avenue shall notify its customers of this Decision and provide to its customers the termination date
6 consistent with this Decision.

7 IT IS FURTHER ORDERED that the requirement of Decision No. 62086 that OnePoint
8 Communications – Colorado, LLC dba Verizon Avenue notify each of its customers sixty days prior
9 to discontinuing service shall be, and hereby is, waived.

10 IT IS FURTHER ORDERED that upon cancellation of its Certificate of Convenience and
11 Necessity, OnePoint Communications – Colorado, LLC dba Verizon Avenue shall no longer be
12 authorized to provide local exchange and long distance telecommunications services in Arizona and
13 therefore, shall no longer be subject to the requirements of Decision No. 62086.

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1 IT IS FURTHER ORDERED that OnePoint Communications – Colorado, LLC dba Verizon
2 Avenue's tariffs on file with the Commission shall be, and hereby are, cancelled.

3 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

4 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

5
6
7 CHAIRMAN

COMMISSIONER

8
9
10 COMMISSIONER

COMMISSIONER

COMMISSIONER

11
12 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
13 Director of the Arizona Corporation Commission, have
14 hereunto set my hand and caused the official seal of the
15 Commission to be affixed at the Capitol, in the City of Phoenix,
16 this ____ day of _____, 2006.

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28
BRIAN C. McNEIL
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

AB:mj

1 SERVICE LIST FOR:

ONEPOINT COMMUNICATIONS - COLORADO,
LLC dba VERIZON AVENUE

3 DOCKET NO.:

T-03475A-06-0104

4 Kimberly A. Grouse
5 SNELL & WILMER
6 400 East Van Buren
7 Phoenix, AZ 85004

Attorneys for OnePoint Communications - Colorado, LLC
dba Verizon Avenue

8 Christopher Kempley, Chief Counsel
9 Legal Division
10 ARIZONA CORPORATION COMMISSION
11 1200 West Washington Street
12 Phoenix, Arizona 85007

Ernest G. Johnson, Director
Utilities Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

COMMISSIONERS
JEFF HATCH-MILLER - Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES



BRIAN C. McNEIL
Executive Director

ARIZONA CORPORATION COMMISSION

DATE: January 30, 2006
DOCKET NO: T-04220A-05-0538

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Amy Bjelland. The recommendation has been filed in the form of an Order on:

VOLO COMMUNICATIONS OF ARIZONA, INC.

(CC&N CANCELLATION)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00 p.m.** on or before:

FEBRUARY 8, 2006

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

FEBRUARY 14 AND 15, 2006

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.


BRIAN C. McNEIL
EXECUTIVE DIRECTOR

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 JEFF HATCH-MILLER, Chairman
4 WILLIAM A. MUNDELL
5 MARC SPITZER
6 MIKE GLEASON
7 KRISTIN K. MAYES

8 IN THE MATTER OF THE APPLICATION OF
9 VOLO COMMUNICATIONS OF ARIZONA, INC.
10 FOR CANCELLATION OF THEIR CERTIFICATE
11 OF CONVENIENCE AND NECESSITY TO
12 PROVIDE FACILITIES-BASED AND RESOLD
13 LOCAL EXCHANGE AND FACILITIES-BASED
14 INTEREXCHANGE TELECOMMUNICATIONS
15 SERVICE IN MARICOPA COUNTY, ARIZONA
16 AND PETITION FOR COMPETITIVE
17 CLASSIFICATION OF ITS SERVICES.

DOCKET NO. T-04220A-05-0538

DECISION NO. _____

ORDER

18 Open Meeting
19 February 14, 2006
20 Phoenix, Arizona

21 **BY THE COMMISSION:**

22 * * * * *

23 Having considered the entire record herein and being fully advised in the premises, the
24 Commission finds, concludes, and orders that:

25 FINDINGS OF FACT

26 1. In Decision No. 66940 (April 21, 2004), the Arizona Corporation Commission
27 ("Commission") granted Volo Communications of Arizona, Inc. ("Volo" or "Applicant") a
28 Certificate of Convenience and Necessity ("Certificate") to provide facilities-based and resold local
exchange and facilities-based interexchange telecommunications service in Maricopa County,
Arizona.

2. On July 27, 2005, Volo filed an application for cancellation of its Certificate. The
application stated that Volo has no customers and no deposits to refund.

3. On September 23, 2005, the Commission's Utilities Division ("Staff") sent its First
Set of Data Requests to Applicant.

4. On October 11, 2005, Applicant filed its responses to Staff's Data Requests.

5. On November 16, 2005, Applicant filed an Affidavit of Publication.

6. On January 17, 2006, Staff filed its Staff Report in this matter recommending approval of Applicant's request to cancel its Certificate.

7. Staff indicated that Applicant never provided telecommunication services as authorized in Decision No. 66940, never collected advances, deposits or prepayments and never posted an operating bond.

8. No Arizona customers will be affected by the requested cancellation.

CONCLUSIONS OF LAW

1. Applicant is a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

2. A.A.C. R14-2-1107 applies to any telecommunications company providing competitive service that intends to discontinue service or to abandon all or a portion of its service area.

3. The Commission has jurisdiction over Applicant and the subject matter of the application.

4. The cancellation of Applicant's Certificate is in the public interest.

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ORDER

IT IS THEREFORE ORDERED that the Certificate of Convenience and Necessity granted to Volo Communications of Arizona, Inc. in Decision No. 66940 is hereby cancelled.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this ____ day of _____, 2006.

BRIAN C. McNEIL
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

1 SERVICE LIST FOR:

VOLO COMMUNICATIONS OF ARIZONA, INC.

2 DOCKET NO.:

T-04220A-05-0538

3
4 Ken Duarte
5 Volo Communications, Inc.
6 151 South Wymore Road, Ste. 3000
7 Altamonte Springs, FL 32714

8 Christopher Kempley, Chief Counsel
9 Legal Division
10 ARIZONA CORPORATION COMMISSION
11 1200 West Washington Street
12 Phoenix, AZ 85007

13 Ernest G. Johnson, Director
14 Utilities Division
15 ARIZONA CORPORATION COMMISSION
16 1200 West Washington
17 Phoenix, AZ 85007
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COMMISSIONERS
JEFF HATCH-MILLER - Chairman
WILLIAM A. MUNDELL
MIKE GLEASON
KRISTIN K. MAYES
BARRY WONG



BRIAN C. MCNEIL
Executive Director

ARIZONA CORPORATION COMMISSION

DATE: August 15, 2006

DOCKET NOS.: T-03708A-06-0116 and T-03779A-06-0116

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Amy Bjelland. The recommendation has been filed in the form of an Order on:

WILTEL COMMUNICATIONS, LLC and WILTEL LOCAL NETWORK LLC

(FINANCING)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00 p.m.** on or before:

AUGUST 17, 2006

10-day period for filing of exceptions has been waived.

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

AUGUST 22 AND 23, 2006

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.


BRIAN C. McNEIL
EXECUTIVE DIRECTOR

1
2 **BEFORE THE ARIZONA CORPORATION COMMISSION**

3 COMMISSIONERS

4 JEFF HATCH-MILLER Chairman
5 WILLIAM A. MUNDELL
6 MIKE GLEASON
7 KRISTIN K. MAYES
8 BARRY WONG

9 IN THE MATTER OF THE APPLICATION OF
10 WITEL COMMUNICATIONS, LLC AND
11 WITEL LOCAL NETWORK, LLC FOR
12 APPROVAL OF INCURRING DEBT AND
13 FINANCING OBLIGATIONS.

DOCKET NO. T-03708A-06-0116
DOCKET NO. T-03779A-06-0116

DECISION NO. _____

ORDER

14 Open Meeting
15 August 22, and 23, 2006
16 Phoenix, Arizona

17 **BY THE COMMISSION:**

18 Having considered the entire record herein and being fully advised in the premises, the
19 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

20 FINDINGS OF FACT

21 1. WilTel Communications, LLC ("WilTel-Comm") is a limited liability company that is
22 a wholly owned subsidiary of WilTel Communications Group, LLC ("WilTel"). WilTel-Comm is
23 authorized to provide intrastate interexchange telecommunications services pursuant to authority
24 granted by the Commission in Decision No. 62025 (November 2, 1999). WilTel-Comm provides
25 wholesale services to VoIP providers, Internet Service Providers and other carriers, and has more
26 than 100 commercial and wholesale customers in Arizona.

27 2. WilTel Local Network, LLC ("WilTel-LN") is a wholly owned subsidiary of WilTel-
28 Comm. WilTel-LN is authorized to provide competitive local exchange services pursuant to
authority granted by the Commission in Decision No. 62727 (June 30, 2000). Each of these entities
is headquartered in Tulsa, Oklahoma.

3. On March 1, 2006, WilTel-Comm and WilTel-LN (jointly, "Petitioners") filed an
application with the Commission requesting authorization to pledge assets and act as a guarantor to a

1 credit agreement entered into, not to exceed \$850 million, by its parent company, Level 3 Financing,
2 Inc. ("Level 3"). The Commission authorized Level 3 to enter into the credit agreement in Decision
3 No. 67810 (May 5, 2005).

4 4. On May 4, 2006, Petitioners provided the Commission's Utilities Division Staff
5 ("Staff") an affidavit of publication verifying that it published notice of its application in *The Arizona*
6 *Republic*, a newspaper of general circulation in Maricopa County, on April 21, 2006.

7 5. On July 18, 2006, Staff filed a Staff Report recommending conditional approval of the
8 application

9 6. The Petitioners propose to pledge assets and act as a guarantor to a credit agreement
10 entered into by their parent company, Level 3, in an amount not to exceed \$850 million.

11 7. The Staff Report states that Staff's review of the transaction indicates that it would not
12 impair the financial status of the Petitioners, would not impair their ability to attract capital, nor
13 would it impair the ability of the Petitioners to provide safe, reliable, and adequate service.

14 8. Staff states that Petitioners' customers have alternative service providers and would
15 not experience significant harm in the event that the parent has financial difficulties.

16 9. Staff states that Petitioners have no outstanding compliance issues.

17 10. Staff concludes that Petitioners benefit from the pledge of assets and guarantee since
18 collateralized debt reduces borrowing costs and the credit agreement produces interest savings and
19 extends maturity dates. Staff further concludes that the proposed pledge of assets and guarantee
20 (exclusive of customer deposits and prepayments) in support of Level 3's \$850 million financing
21 arrangement is appropriate and lawful, is within the corporate powers of the Petitioners, is compatible
22 with the public interest, is consistent with sound financial practices and will not impair Petitioners'
23 ability to provide service.

24 11. Staff recommends:

25 (a) approval of Petitioners' application subject to the condition that all customer
26 deposits and prepayments be excluded from encumbrance and equivalent amounts retained by
27 WilTel-Comm and WilTel-LN;

28 (b) approval of granting liens in favor of the lender to support the borrowings;

(c) authorizing Petitioners to engage in any transactions and to execute any documents necessary to effectuate the authorizations granted; and executed security documents be filed with Docket Control, as a compliance item in this docket, within 90 days of the Decision in this matter.

14. On August 15, 2006, Petitioners docketed a letter indicating that they waives the 10 day exception period under AAC R14-3-110 in order to have this matter placed on the August 22, 2006 Regularly Scheduled Open Meeting agenda.

CONCLUSIONS OF LAW

1. Petitioners are public service corporations within the meaning of Article XV of the Arizona Constitution, A.R.S. §§ 40-285, 40-301, 40-302, and A.A.C. R14-2-804.

2. The Commission has jurisdiction over Petitioners and the subject matter of the application.

3. Authorization of Petitioners' guarantee in support of its parent's debt issuance is compatible with the public interest.

4. The guarantee authority approved herein will not impair the financial status of the public utility, otherwise prevent it from attracting capital at fair and reasonable terms, or impair the ability of the public utility to provide safe, reasonable and adequate service.

5. The guarantee authority approved herein is for lawful purposes within Petitioners' corporate powers, is compatible with the public interest, with sound financial practices, and with the proper performance by Petitioners of service as a public service corporation will not impair Petitioners' ability to perform that service.

6. Staff's recommendations are reasonable and should be adopted.

ORDER

IT IS THEREFORE ORDERED that pursuant to A.R.S. §§ 40-285, 40-301, and AAC R14-2-804, WilTel Communications, LLC and WilTel Local Network, LLC's application for approval to guarantee the debt of Level 3 Financing, Inc. as set forth in the March 1, 2006 application, and as conditioned herein, is hereby granted.

IT IS FURTHER ORDERED that WilTel Communications, LLC and WilTel Local Network, LLC are hereby authorized to grant liens and engage in any transactions and/or execute any

1 documents necessary to effectuate the authorization as granted herein, except that all customer
2 deposits and prepayments shall be excluded from encumbrance and equivalent amounts shall be
3 retained by WilTel Communications, LLC and WilTel Local Network, LLC.

4 IT IS FURTHER ORDERED that WilTel Communications, LLC and WilTel Local Network,
5 LLC shall file the executed security documents with Docket Control, as a compliance item in this
6 docket, within 90 days of the effective date of this Decision.

7 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

8 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

9
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11 CHAIRMAN

COMMISSIONER

12
13 COMMISSIONER

COMMISSIONER

COMMISSIONER

14
15 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
16 Director of the Arizona Corporation Commission, have
17 hereunto set my hand and caused the official seal of the
18 Commission to be affixed at the Capitol, in the City of Phoenix,
19 this ____ day of _____, 2006.

20 BRIAN C. McNEIL
21 EXECUTIVE DIRECTOR

22
23 DISSENT _____

24
25 DISSENT _____

1 SERVICE LIST FOR:

WITEL COMMUNICATIONS, LLC AND WITEL
LOCAL NETWORK, LLC

2
3 DOCKET NO.:

T-03708A-06-0116 and T-03779A-06-0116

4 Thomas H. Campbell
5 Michael T. Hallam
6 LEWIS AND ROCA
7 40 N. Central Avenue
8 Phoenix, AZ 85004

9 Christopher Kempley, Chief Counsel
10 Legal Division
11 ARIZONA CORPORATION COMMISSION
12 1200 West Washington Street
13 Phoenix, Arizona 85007

14 Ernest G. Johnson, Director
15 Utilities Division
16 ARIZONA CORPORATION COMMISSION
17 1200 West Washington Street
18 Phoenix, Arizona 85007
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COMMISSIONERS
JEFF HATCH-MILLER - Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES



BRIAN C. McNEIL
Executive Director

ARIZONA CORPORATION COMMISSION

DATE: December 16, 2005

DOCKET NO: T-02891A-05-0807

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Amy Bjelland. The recommendation has been filed in the form of an Order on:

PAUL FOGGE dba WOD SYSTEMS

(CC&N CANCELLATION)

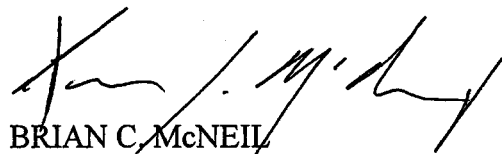
Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00 p.m.** on or before:

DECEMBER 27, 2005

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

JANUARY 24 AND 25, 2006

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.


BRIAN C. McNEIL
EXECUTIVE DIRECTOR

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 JEFF HATCH-MILLER, Chairman
4 WILLIAM A. MUNDELL
5 MARC SPITZER
6 MIKE GLEASON
7 KRISTIN K. MAYES

8 IN THE MATTER OF THE APPLICATION OF
9 PAUL FOGGE dba WOD SYSTEMS FOR THE
10 CANCELLATION OF THE CERTIFICATE OF
11 CONVENIENCE AND NECESSITY TO PROVIDE
12 CUSTOMER-OWNED PAY TELEPHONE
13 SERVICE IN THE STATE OF ARIZONA.

DOCKET NO. T-02891A-05-0807

DECISION NO. _____

ORDER

14 Open Meeting
15 January 24 and 25, 2005
16 Phoenix, Arizona

17 **BY THE COMMISSION:**

18 Having considered the entire record herein and being fully advised in the premises, the
19 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

20 FINDINGS OF FACT

21 1. Paul Fogge dba WOD Systems ("Applicant") has a Certificate of Convenience and
22 Necessity ("Certificate") to provide customer-owned pay telephone ("COPT") service in the State of
23 Arizona pursuant to Decision No. 59194 (August 8, 1995).

24 2. On November 2, 2005, Applicant filed with the Commission an application for
25 cancellation of its Certificate. Applicant indicated that it no longer provides COPT service in the
26 State of Arizona and is not requesting authority to sell its COPT assets.

27 3. On December 8, 2005, the Commission's Utilities Division Staff ("Staff") filed a Staff
28 Report, recommending approval of the application to cancel Applicant's Certificate without a
hearing.

CONCLUSIONS OF LAW

1. Applicant is a public service corporation within the meaning of Article XV of the
Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

2. The Commission has jurisdiction over Applicant and the subject matter of the

1 application.

2 3. The cancellation of Applicant's Certificate is in the public interest.

3 4. Pursuant to A.R.S. § 40-282, the Commission may issue Decisions regarding COPT
4 Certificates without a hearing.

5 5. Staff's recommendation in Findings of Fact No. 3 is reasonable and should be
6 adopted.

7 **ORDER**

8 IT IS THEREFORE ORDERED that the application of Paul Fogge dba WOD Systems for the
9 cancellation of the Certificate of Convenience and Necessity to provide customer-owned pay
10 telephone service shall be, and is hereby, approved.

11 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

12 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

13
14 CHAIRMAN

COMMISSIONER

15
16 COMMISSIONER

COMMISSIONER

COMMISSIONER

17
18 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
19 Director of the Arizona Corporation Commission, have
20 hereunto set my hand and caused the official seal of the
21 Commission to be affixed at the Capitol, in the City of Phoenix,
22 this ____ day of ____, 2006.

23
24 BRIAN C. McNEIL
EXECUTIVE DIRECTOR

25
26 DISSENT _____

27 DISSENT _____

28 AB:mj

SERVICE LIST FOR:

PAUL FOGGE dba WOD SYSTEMS

DOCKET NO.:

T-02891A-05-0807

Paul Fogge
5234 East Roundup Street
Apache Junction, AZ 85219

Christopher Kempley, Chief Counsel
Legal Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

Ernest G. Johnson, Director
Utilities Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

COMMISSIONERS
JEFF HATCH-MILLER - Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES



BRIAN C. McNEIL
Executive Director

ARIZONA CORPORATION COMMISSION

DATE: March 20, 2006

DOCKET NO: W-01979A-05-0645

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Amy Bjelland. The recommendation has been filed in the form of an Opinion and Order on:

SILVERWELL SERVICE CORPORATION dba WATCO, INC.

(CC&N EXTENSION)


Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00 p.m.** on or before:

MARCH 29, 2006

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

APRIL 4 AND 5, 2006

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.


BRIAN C. McNEIL
EXECUTIVE DIRECTOR

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 JEFF HATCH-MILLER, Chairman
4 WILLIAM A. MUNDELL
5 MARC SPITZER
6 MIKE GLEASON
7 KRISTIN K. MAYES

8 IN THE MATTER OF THE APPLICATION OF
SILVERWELL SERVICE CORPORATION DBA
WATCO, INC. FOR AN EXTENSION OF ITS
CERTIFICATE OF CONVENIENCE AND
NECESSITY.

DOCKET NO. W-01979A-05-0645

DECISION NO. _____

OPINION AND ORDER

9 DATE OF HEARING: February 13, 2006

10 PLACE OF HEARING: Phoenix, Arizona

11 ADMINISTRATIVE LAW JUDGE: Amy Bjelland

12 APPEARANCES: Mr. Mark Grapp, President and General Manager,
13 Silverwell Service Corporation doing business as
WATCO, Inc.; and

14 Mr. Keith Layton, Staff Attorney, on behalf of the
15 Arizona Corporation Commission's Utilities Division.

16 **BY THE COMMISSION:**

17 On September 6, 2005, Silverwell Service Corporation doing business as WATCO, Inc.
18 ("WATCO") filed with the Arizona Corporation Commission ("Commission") an Application for an
19 extension of its existing Certificate of Convenience and Necessity ("Certificate").

20 On October 5, 2005, the Commission's Utilities Division Staff ("Staff") filed an Insufficiency
21 Letter.

22 On November 4, 2005, WATCO filed its response to Staff's Insufficiency Letter.

23 On November 30, 2005, WATCO filed Supplemental Information.

24 On December 2, 2005, Staff filed a Letter of Sufficiency.

25 On December 6, 2005, by Procedural Order, a hearing was set in this matter for February 13,
26 2006.

27 On December 27, 2005, WATCO filed an Affidavit of Publication and a copy of the notice
28 sent to property owners in the extension area.

1 On January 20, 2006, Staff filed its Staff Report recommending approval of the application
2 with conditions.

3 On January 26, 2006, WATCO filed its Navajo County franchise.

4 On February 13, 2006, a full public hearing was convened before a duly authorized
5 Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. Both parties made
6 appearances. At the conclusion of the hearing, the matter was taken under advisement pending
7 submission of a Recommended Opinion and Order.

8 * * * * *

9 Having considered the entire record herein and being fully advised in the premises, the
10 Commission finds, concludes, and orders that:

11 **FINDINGS OF FACT**

12 1. Pursuant to authority granted by the Commission in Decision No. 38013 (September
13 7, 1965), WATCO is an Arizona corporation that provides water service to approximately 290
14 customers in portions of Navajo County, Arizona.

15 2. On September 6, 2005, WATCO filed an Application with the Commission for an
16 extension of its existing Certificate to an area of Navajo County known as the Shumway Road
17 Improvement District ("District"), described more fully in attached Exhibit A. The extension would
18 add approximately 888 acres (1.35 square miles) about six miles northwest of WATCO's existing
19 1.75 miles of certificated area, which is located approximately six miles northeast of Show Low in
20 Navajo County, Arizona.

21 3. Mr. Thomas Daggett, Managing Member of Canyon Vista Properties, LLC ("Canyon
22 Vista"), testified that Canyon Vista requested water service from WATCO for the Canyon Vista
23 Estates Subdivision. Mr. Daggett stated that the first phase of development is a proposed 105 acre,
24 56 lot residential development located within the District. The water system for Canyon Vista
25 Estates will be designed in such a manner as to allow for its expansion to serve future phases of
26 development within the District, including a future subdivision called Cedar Mesa Ridge, which will
27 have 54 lots. Mark Grapp, President and General Manager of WATCO, testified that there are no
28 other water providers contiguous to or in close proximity to the District.

1 **Water System**

2 4. WATCO currently has two water systems; the Silver Lake Estates System (Public
3 Water System ("PWS") No. 09-027) and the Bourdon Ranch Estates System (PWS No. 09-049).
4 According to Staff, WATCO is current in paying its property taxes. The Silver Lake Estate System
5 serves approximately 260 customers, and the Bourdon Ranch Estates System serves approximately
6 30 customers. Staff stated that based on historical growth rates, the existing service area is
7 anticipated to have approximately 315 total customers at the end of five years. The two systems
8 consist of two wells with a total production capacity of 89 gallons per minute ("gpm"), 125,000
9 gallons of storage capacity, booster pumps, pressure tanks and distribution systems. The two water
10 systems are interconnected via a temporary line to accommodate demand during peak water use
11 periods. WATCO is in the process of obtaining a Water Infrastructure Financing Authority
12 ("WIFA") loan to finance the construction of a line which will permanently replace the temporary
13 line. Mr. Grapp testified that, in addition to the replacement of the temporary line, WATCO will
14 obtain additional storage, and upgrade its water meters throughout its existing system with the
15 proceeds of the loan. WATCO has informed Staff that it plans to file a financing application with the
16 Commission for the required loan approval within six months. Staff recommends that WATCO be
17 required to file for loan approval no later than six months of a decision in this docket.

18 5. Because the requested extension area is several miles from WATCO's existing service
19 area, the requested service area will be served by its own well and storage tank. WATCO predicts 95
20 new connections for the proposed extension at the end of five years. The new system will include a
21 well with a maximum production capacity of 200 gpm, a 120,000 gallon storage tank, booster pumps,
22 pressure tank, fire flow and distribution system. Staff estimated that the proposed system can serve
23 approximately 170 connections. Staff concluded that the proposed system will have adequate
24 production and storage capacity to serve the proposed Certificate area and that it can reasonably be
25 expected to develop additional storage and production as required in the future.

26 6. WATCO plans to finance the required utility facilities through advances in aid of
27 construction, which generally take the form of Main Extension Agreements ("MXAs"). MXAs
28 between water utilities and private parties are governed by A.A.C. R14-2-406, and result in developer

1 construction of the facilities, conveyance of the facilities to the utility company, and a refund by the
2 water utility of ten percent of the annual revenue associated with the line to the developer for a period
3 of ten years. Staff recommended that WATCO filed with Docket Control, as a compliance item, a
4 Notice of Filing indicating WATCO has submitted for Staff review and approval a copy of the fully
5 executed MXAs for water facilities for the extension area within 365 days of a decision in this case.

6 7. Staff stated that the Arizona Department of Environmental Quality ("ADEQ") has
7 determined that WATCO's two existing water systems are currently delivering water that meets
8 ADEQ water quality standards.

9 8. WATCO is not located in an Active Management Area and therefore is not subject to
10 Arizona Department of Water Resources ("ADWR") reporting and conservation rules. WATCO has
11 not yet received a copy of the Developer's Letter of Adequate Water Supply for the requested
12 extension area. Staff recommended that WATCO be ordered to file with Docket Control, as a
13 compliance item, copies of the Developer's Letter of Adequate Water Supply, stating that there is
14 adequate water, no later than six months of a decision in this docket.

15 9. Rules established by the United States Environmental Protection Agency ("EPA")
16 require the maximum contaminant level ("MCL") for arsenic in potable water to be reduced from 50
17 parts per billion ("ppb") to 10 ppb, effective January 23, 2006. Staff stated that the most recent lab
18 analysis of the wells for the two existing water systems indicates that the arsenic levels are 3 and 4.6
19 ppb. Based on these arsenic concentrations, WATCO is in compliance with the new arsenic MCL.

20 10. Staff stated that a Curtailment Plan Tariff ("CPT") is an effective tool to allow a water
21 company to manage resources during periods of water shortages due to pump breakdowns, droughts,
22 or other unforeseeable events. WATCO has a curtailment tariff on file with the Utilities Division.

23 11. WATCO proposed to provide water service to the extension area using a different
24 rates and charges tariff schedule. Staff stated that the proposed rates and charges for the extension
25 area are higher than WATCO's authorized rates and charges for its existing Certificate area. Staff
26 stated that WATCO informed Staff of its plans to file an application for a rate increase with the
27 Commission for its existing Certificate area within the next few months due to the net loss of \$12,582
28 it experienced in 2004. It is the Commission's normal practice and procedure to require companies

1 proposing to extend their Certificates to charge their tarified or authorized rates and charges in the
2 requested extension area. Because WATCO is planning to file for a rate increase, Staff
3 recommended that WATCO be required to charge its authorized rates and charges in the extension
4 area. Staff further recommended that WATCO be required to file a rate case application by
5 September 30, 2006, using a 2005 test year. Mr. Grapp testified that WATCO agreed with Staff's
6 recommendation.

7 12. Arizona law requires every applicant for a CC&N or CC&N extension to submit
8 evidence to the Commission that the applicant has received consent, franchise or permit from the
9 proper authority prior to being granted the CC&N or CC&N extension. WATCO is located in an
10 unincorporated part of Navajo County, and has docketed its franchise agreement with Navajo County.

11 13. Because an allowance for the property tax expense of WATCO is included in the
12 Company's rates and will be collected from its customers, the Commission seeks assurances from the
13 Company that any taxes collected from ratepayers have been remitted to the appropriate taxing
14 authority. It has come to the Commission's attention that a number of water companies have been
15 unwilling or unable to fulfill their obligation to pay the taxes that were collected from ratepayers,
16 some for as many as twenty years. It is reasonable, therefore, that as a prophylactic measure
17 WATCO annually file, as part of its annual report, an affidavit with the Utilities Division attesting
18 that the company is current in paying its property taxes in Arizona.

19 **Staff's Recommendations**

20 14. Staff recommended that the Commission approve WATCO's application for an
21 extension of its Certificate within portions of Navajo County, Arizona, to provide water service,
22 subject to compliance with the following conditions:

23 (a) To require WATCO to charge its authorized rates and charges in the extension
24 area.

25 (b) To require WATCO to file for approval of the financing application associated
26 with the proposed construction of a permanent interconnection between the Silver Lake
27 Estates System and the Bourdon Ranch Estates System no later than six months of a decision
28 in this docket.

1 (c) To require WATCO to file with Docket Control, as a compliance item in this
2 docket, copies of the ADEQ Approval to Construct ("ATC") for the proposed new water
3 system no later than one year of a decision in this docket.

4 (d) To require WATCO to file with Docket Control, as a compliance item in this
5 docket, a Notice of Filing indicating WATCO has submitted for Staff review and approval, a
6 copy of the fully executed main extension agreements for water facilities for the extension
7 area within 365 days of a decision in this docket.

8 (e) To require WATCO to file with Docket Control, as a compliance item in this
9 docket, copies of the Developer's Letter of Adequate Water Supply, stating that there is
10 adequate water, no later than six months of a decision in this docket.

11 (f) To require WATCO to file with Docket Control, as a compliance item in this
12 docket, a copy of the franchise agreement from Navajo County for the requested area within
13 365 days of the decision in this docket.

14 (g) To require WATCO to file a rate case application by September 30, 2006,
15 using a 2005 test year.

16 15. Staff further recommended that the Commission's Decision granting the requested
17 Certificate extension to WATCO be considered null and void, after due process, should WATCO fail
18 to meet Conditions (b), (c), (d), (e), (f), and (g), above, within the time specified.

19 **CONCLUSIONS OF LAW**

20 1. WATCO is a public service corporation within the meaning of Article XV of the
21 Arizona Constitution and A.R.S. §§ 40-281 and 40-282 *et seq.*

22 2. The Commission has jurisdiction over WATCO and the subject matter of the
23 application.

24 3. Notice of the application was provided in accordance with law.

25 4. There is a public need and necessity for water utility service in the proposed extension
26 area.

27 5. WATCO is a fit and proper entity to receive a water CC&N extension to include the
28 service area more fully described in Exhibit A attached hereto, subject to compliance with the

1 conditions set forth above.

2 **ORDER**

3 IT IS THEREFORE ORDERED that the application of Silverwell Service Corporation doing
4 business as WATCO, Inc. for an extension of its existing water Certificate of Convenience and
5 Necessity to include the area described in Exhibit A attached hereto and incorporated herein by
6 reference be, and is hereby approved, subject to the conditions more fully described herein.

7 IT IS FURTHER ORDERED that Silverwell Service Corporation doing business as WATCO,
8 Inc. charge its authorized rates and charges in the extension area.

9 IT IS FURTHER ORDERED that should Silverwell Service Corporation doing business as
10 WATCO, Inc. fail to meet the conditions enumerated in the following six Ordering Paragraphs, this
11 Decision shall be considered null and void after due process.

12 IT IS FURTHER ORDERED that Silverwell Service Corporation doing business as WATCO,
13 Inc. shall file for approval of the financing application associated with the proposed construction of a
14 permanent interconnection between the Silver Lake Estates System and the Bourdon Ranch Estates
15 System within six months of this Decision.

16 IT IS FURTHER ORDERED that Silverwell Service Corporation doing business as WATCO,
17 Inc. shall file with Docket Control, as a compliance item in this docket, copies of the Arizona
18 Department of Environmental Quality Approval to Construct for the proposed new water system
19 within one year of this Decision.

20 IT IS FURTHER ORDERED that Silverwell Service Corporation doing business as WATCO,
21 Inc. shall file with Docket Control, as a compliance item in this docket, a Notice of Filing indicating
22 WATCO, Inc. has submitted for Staff review and approval, a copy of the fully executed main
23 extension agreements for water facilities for the extension area within 365 days of this Decision.

24 IT IS FURTHER ORDERED that Silverwell Service Corporation doing business as WATCO,
25 Inc. shall file with Docket Control, as a compliance item in this docket, copies of the Developer's
26 Letter of Adequate Water Supply, stating that there is adequate water, within six months of this
27 Decision.

28 IT IS FURTHER ORDERED that Silverwell Service Corporation doing business as WATCO,

1 Inc. shall file a rate case application by September 30, 2006, using a 2005 test year.

2 IT IS FURTHER ORDERED that Silverwell Service Corporation doing business as WATCO,
3 Inc. shall annually file as part of its annual report, an affidavit with the Utilities Division attesting that
4 the Company is current in paying its property taxes in Arizona.

5 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

6 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

7
8
9 CHAIRMAN

COMMISSIONER

10
11 COMMISSIONER

COMMISSIONER

COMMISSIONER

12
13 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
14 Director of the Arizona Corporation Commission, have
15 hereunto set my hand and caused the official seal of the
16 Commission to be affixed at the Capitol, in the City of Phoenix,
17 this ____ day of _____, 2006.

18
19 BRIAN C. McNEIL
20 EXECUTIVE DIRECTOR

21 DISSENT _____

22 DISSENT _____

23 AB:mj

1 SERVICE LIST FOR: WATCO, INC.
2 DOCKET NO.: W-01979A-05-0645

3 Mark Grapp
4 WATCO
5 P.O. Box 1270
6 Show Low, AZ 85902

7 Christopher Kempley, Chief Counsel
8 Legal Division
9 ARIZONA CORPORATION COMMISSION
10 1200 West Washington Street
11 Phoenix, AZ 85007

12 Ernest G. Johnson, Director
13 Utilities Division
14 ARIZONA CORPORATION COMMISSION
15 1200 West Washington
16 Phoenix, AZ 85007
17
18
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21
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28

PARCEL OF LAND SITUATED WITHIN SECTIONS 30 AND 31, TOWNSHIP 12 NORTH, RANGE 22 EAST
OF THE GILA & SALT RIVER MERIDIAN, NAVAJO COUNTY, ARIZONA, BEING MORE PARTICULARLY

DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID SECTION 31:

THENCE S 00°26'48" W, A DISTANCE OF 4390.29 FEET;
THENCE S 83°18'57" W, A DISTANCE OF 277.69 FEET;
THENCE S 86°59'55" W, A DISTANCE OF 184.18 FEET;
THENCE S 88°20'03" W, A DISTANCE OF 308.05 FEET;
THENCE N 64°08'01" W, A DISTANCE OF 25.26 FEET;
THENCE N 48°48'03" W, A DISTANCE OF 279.24 FEET;
THENCE N 60°40'53" W, A DISTANCE OF 118.51 FEET;
THENCE N 50°21'58" W, A DISTANCE OF 538.48 FEET;
THENCE N 57°34'03" W, A DISTANCE OF 78.35 FEET;
THENCE N 79°18'24" W, A DISTANCE OF 161.94 FEET;
THENCE N 51°47'30" W, A DISTANCE OF 203.39 FEET;
THENCE N 67°00'41" W, A DISTANCE OF 68.19 FEET;
THENCE N 56°04'54" W, A DISTANCE OF 336.04 FEET;
THENCE N 53°22'58" W, A DISTANCE OF 126.16 FEET;
THENCE N 50°19'16" W, A DISTANCE OF 199.60 FEET;
THENCE N 67°55'56" W, A DISTANCE OF 82.51 FEET;
THENCE N 82°58'31" W, A DISTANCE OF 146.46 FEET;
THENCE N 80°22'29" W, A DISTANCE OF 358.43 FEET;
THENCE S 77°47'12" W, A DISTANCE OF 162.81 FEET;
THENCE S 36°52'12" W, A DISTANCE OF 99.89 FEET;
THENCE S 56°48'42" W, A DISTANCE OF 130.88 FEET;
THENCE S 23°02'22" W, A DISTANCE OF 207.32 FEET;
THENCE N 89°49'27" W, A DISTANCE OF 3196.54 FEET;
THENCE N 08°32'35" W, A DISTANCE OF 153.27 FEET;
THENCE N 36°34'29" W, A DISTANCE OF 179.44 FEET;
THENCE N 18°24'04" W, A DISTANCE OF 61.00 FEET;
THENCE N 89°58'07" E, A DISTANCE OF 670.90 FEET;
THENCE N 17°09'50" W, A DISTANCE OF 329.41 FEET;
THENCE N 21°16'25" W, A DISTANCE OF 204.94 FEET;
THENCE N 09°11'29" W, A DISTANCE OF 129.71 FEET;
THENCE N 34°49'51" W, A DISTANCE OF 832.93 FEET;
THENCE N 20°20'22" W, A DISTANCE OF 313.23 FEET;
THENCE N 10°45'32" W, A DISTANCE OF 591.04 FEET;
THENCE N 90°00'00" W, A DISTANCE OF 523.49 FEET;
THENCE N 00°00'00" E, A DISTANCE OF 935.00 FEET;
THENCE S 89°58'59" E, A DISTANCE OF 942.48 FEET;
THENCE N 00°18'36" E, A DISTANCE OF 2007.48 FEET;
THENCE N 85°58'59" W, A DISTANCE OF 437.40 FEET;
THENCE S 03°55'54" E, A DISTANCE OF 466.15 FEET;

THENCE N 13°33'39" W, A DISTANCE OF 275.01 FEET;
THENCE N 00°21'04" E, A DISTANCE OF 179.44 FEET;
THENCE N 15°22'16" E, A DISTANCE OF 130.17 FEET;
THENCE N 09°50'55" E, A DISTANCE OF 20.19 FEET;
THENCE S 78°45'07" E, A DISTANCE OF 394.47 FEET;
THENCE S 69°28'56" E, A DISTANCE OF 46.25 FEET;
THENCE N 00°28'26" W, A DISTANCE OF 466.13 FEET TO A
NON-TANGENT CURVE, THROUGH A CENTRAL ANGLE OF 62°36'48" AND
A RADIUS OF 473.04 FEET;

THENCE ALONG SAID CURVE A DISTANCE OF 516.94 FEET TO A
NON-TANGENT CURVE, THROUGH A CENTRAL ANGLE OF 56°48'51" AND
A RADIUS OF 880.35 FEET;

THENCE ALONG SAID CURVE A DISTANCE OF 881.88 FEET;
THENCE N 22°10'40" E, A DISTANCE OF 70.09 FEET;
THENCE N 06°22'10" E, A DISTANCE OF 129.06 FEET;
THENCE N 64°05'18" E, A DISTANCE OF 60.77 FEET;
THENCE N 20°22'33" E, A DISTANCE OF 83.55 FEET;
THENCE N 11°51'27" E, A DISTANCE OF 232.66 FEET;
THENCE N 06°22'16" E, A DISTANCE OF 66.02 FEET;
THENCE N 90°00'00" E, A DISTANCE OF 1746.83 FEET;
THENCE S 09°04'58" W, A DISTANCE OF 17.30 FEET;
THENCE S 01°21'11" W, A DISTANCE OF 112.47 FEET;
THENCE S 02°44'15" E, A DISTANCE OF 107.73 FEET;
THENCE S 00°08'25" E, A DISTANCE OF 1064.57 FEET;
THENCE S 49°31'55" E, A DISTANCE OF 232.40 FEET;
THENCE S 69°18'42" E, A DISTANCE OF 84.31 FEET;
THENCE S 87°46'18" E, A DISTANCE OF 165.31 FEET;
THENCE S 85°14'39" E, A DISTANCE OF 52.76 FEET;
THENCE N 89°21'00" E, A DISTANCE OF 224.25 FEET;
THENCE S 88°09'38" E, A DISTANCE OF 407.67 FEET;
THENCE N 84°12'48" E, A DISTANCE OF 60.69 FEET;
THENCE S 77°41'54" E, A DISTANCE OF 43.21 FEET;
THENCE S 63°39'13" E, A DISTANCE OF 228.62 FEET;
THENCE S 16°54'41" W, A DISTANCE OF 120.04 FEET;
THENCE S 01°56'09" W, A DISTANCE OF 284.26 FEET;
THENCE S 00°53'05" E, A DISTANCE OF 837.28 FEET;
THENCE S 06°30'11" E, A DISTANCE OF 149.76 FEET;
THENCE S 89°34'45" E, A DISTANCE OF 2849.64 FEET;
THENCE S 00°11'21" W, A DISTANCE OF 1295.83 FEET;
THENCE N 89°13'27" E, A DISTANCE OF 1296.42 FEET TO
THE POINT OF BEGINNING.

SAID PARCEL BEING 888.29 ACRES, MORE OR LESS AS
CERTIFIED BY THE SURVEYOR.

COMMISSIONERS
JEFF HATCH-MILLER - Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES



BRIAN C. McNEIL
Executive Director

ARIZONA CORPORATION COMMISSION

DATE: December 16, 2005

DOCKET NO: W-02451A-05-0615

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Amy Bjelland. The recommendation has been filed in the form of an Order on:

WATER UTILITY OF GREATER BUCKEYE, INC.

(FINANCING)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00 p.m.** on or before:

DECEMBER 27, 2005

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

JANUARY 24 AND 25, 2006

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.


BRIAN C. McNEIL
EXECUTIVE DIRECTOR

1
2 **BEFORE THE ARIZONA CORPORATION COMMISSION**

3 COMMISSIONERS

4 JEFF HATCH-MILLER Chairman
5 WILLIAM A. MUNDELL
6 MARC SPITZER
7 MIKE GLEASON
8 KRISTIN K. MAYES

9
10
11 IN THE MATTER OF THE APPLICATION OF
12 WATER UTILITY OF GREATER BUCKEYE, INC.
13 FOR AUTHORITY TO ISSUE DEBT.

DOCKET NO. W-02451A-05-0615

DECISION NO. _____

14 ORDER

15 Open Meeting
16 January 24 and 25, 2006
17 Phoenix, Arizona

18 **BY THE COMMISSION:**

19 On August 24, 2005, Water Utility of Greater Buckeye, Inc. ("Applicant") filed with the
20 Arizona Corporation Commission ("Commission") an application requesting authorization to issue
21 long-term debt to the Water Infrastructure Financing Authority ("WIFA") in an amount not to exceed
22 \$165,000.

23 On October 19, 2005, Applicant filed certification that it had provided notice of the
24 application by publishing in a newspaper of general circulation.

25 On November 23, 2005, the Commission's Utilities Division Staff ("Staff") filed its Staff
26 Report, recommending approval of the application.

27 * * * * *

28 Having considered the entire record herein and being fully advised in the premises, the
Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

FINDINGS OF FACT

1. Pursuant to authority granted by the Commission, Applicant is an Arizona corporation
that provides water service to approximately 500 customers in and around Buckeye, Maricopa
County, Arizona.

1 2. On August 24, 2005, Applicant filed with the Commission an application requesting
2 authorization to issue long-term debt to WIFA in an amount not to exceed \$165,000.

3 3. On October 19, 2005, Applicant filed certification that it caused notice of the
4 application to be published in the *West Valley View*, a newspaper of general circulation in Avondale,
5 Buckeye, Goodyear, Litchfield Park and Tolleson, Arizona.

6 4. Applicant's request for issuance of debt arises from rules established by the United
7 States Environmental Protection Agency ("EPA") that require the maximum contaminant level for
8 arsenic in potable water to be reduced from 50 parts per billion ("ppb") to 10 ppb, effective January
9 23, 2006.

10 5. The proposed financing will be used for the construction of a water treatment plant to
11 remove arsenic from Applicant's water system in order to meet the EPA and Arizona Department of
12 Environmental Quality ("ADEQ") January 23, 2006 deadline for compliance.

13 6. On November 23, 2005, Staff filed its Staff Report, recommending approval of the
14 application.

15 7. Staff stated that it examined the construction plans and estimated costs for Applicant's
16 water treatment project and found them to be reasonable and appropriate.

17 8. Staff stated that the proposed financing is for a 20-year loan which is to be amortized
18 at an estimated interest rate of 5.2 percent.

19 9. Staff performed an analysis of Applicant's financial statements for the twelve-month
20 period ended December 31, 2004. Staff accepted only the Applicant's projections that pertain to the
21 operation of the arsenic treatment plant for its analysis.

22 10. As of December 31, 2004, Applicant's capital structure consisted of 3.62 percent
23 short-term debt, 67.14 percent long-term debt, and 29.24 percent equity.

24 11. Staff's analysis showed that if Applicant were to draw the entire \$165,000, the result
25 would be an unsound capital structure that would consist of approximately 3.23 percent short-term
26 debt, 83.66 percent long-term debt, and 13.10 percent equity.

27 12. Staff stated that it typically recommends that privately owned or investor owned
28 utilities maintain a capital structure consisting of not less than 40.00 percent equity. However, Staff

1 evaluates several factors, including, but not limited to, the utility's access to capital, current level of
2 debt, age of system, management's experience, the adequacy of existing or proposed rates, etc., in
3 making determinations as to an appropriate level of equity in each individual case. In this docket
4 Staff recommended that Applicant's equity level of approximately 30.00 percent not be reduced in
5 the short-term.

6 13. Staff proposed financing the construction of the proposed plant with a mix of debt and
7 equity, consistent with its recommendation to maintain a capital structure of 30.00 percent equity.
8 Staff stated its recommendation could be achieved by financing the construction with \$50,500 of
9 equity and \$114,500 of debt on a pro rata basis. This would result in a pro forma capital structure
10 comprised of 2.74 percent short-term debt, 67.26 percent long-term debt and 30.00 percent equity.
11 Staff stated that a mix of funds that uses more than \$50,500 of equity would provide greater financial
12 strength and be preferable, and that the Applicant should be encouraged to work toward a capital
13 structure with at least 40.00 percent equity in the long term.

14 14. The Debt Service Coverage ("DSC") ratio represents the number of times internally
15 generated cash will cover required principal and interest payments on long-term debt. A DSC ratio
16 greater than 1.0 means that operating cash flow is sufficient to cover debt obligations, A DSC less
17 than 1.0 means that debt service obligations cannot be met from operations and that another source of
18 funds is needed to avoid default.

19 15. The Times Interest Earned Ratio ("TIER") represents the number of times earnings
20 will cover interest expense on short-term and long-term debt. A TIER greater than 1.0 means that
21 operating income is greater than interest expense. A TIER of less than 1.0 is not sustainable in the
22 long term but does not necessarily mean that debt obligations cannot be met in the short term.

23 16. Based on its analysis of the projected 2005 financial statements, Staff determined that
24 the pro forma effect a \$114,500 loan if fully drawn would be a change to the Applicant's TIER from
25 $<0.11>$ to $<0.06>$ and a lowering of the Applicant's DSC from 7.77 to 4.12. Staff concluded that the
26 pro forma DSC ratio shows that the Applicant has adequate cash flow to meet all obligations on the
27 Staff recommendation. However, the Applicant's TIER indicates that the Company's income is
28 insufficient to support the proposed loan in the long term.

1 17. Staff concluded that the capital structure that would result from the incurrence of the
2 \$114,500 proposed debt is acceptable in the short-term. However, Staff believes that this capital
3 structure is outside the desirable range for the long-term.

4 18. Based on Staff's concerns for Applicant's long-term capital structure, Staff
5 recommended authorizing for the Applicant to issue debt to WIFA in an amount not to exceed
6 \$114,500.

7 19. Staff further recommended that if or when equity falls below 30.00 percent of total
8 capital, the Applicant be prohibited from distributing more than 25.00 percent of each year's earnings
9 or distributing assets to principals via salaries, management fees, or otherwise in excess of current
10 levels adjusted for changes in the Consumer Price Index.

11 20. Staff further recommended that the Applicant file, as a compliance item in this docket,
12 a plan that is acceptable to Staff, by April 30, 2006, to increase its equity to 40.00 percent of total
13 capital.

14 21. Staff further recommended that the Applicant file for an increase in permanent rates
15 no later than May 18, 2007, with a 2006 test year, unless the Applicant can demonstrate to Staff's
16 satisfaction that its TIER will increase to 1.0 or greater by December 31, 2006.

17 22. Applicant seeks WIFA financing approval for arsenic treatment of two current
18 operating well sites, Well ADWR #55-802333 (Sweetwater II) and Well ADWR #55-572657
19 (Sonoran Ridge). The current arsenic levels of these wells are, respectively, 12 ppb and 14 ppb.
20 Applicant plans to install FlexSorb Modular Sorption systems as water treatment systems that use
21 ArsenX media to remove arsenic. ArsenX is a new hybrid arsenic removal media that utilizes nano-
22 particle technology to combine iron chemistry and plastic bead durability.

23 23. A Staff engineer reviewed the Applicant's proposal and found the estimated project
24 costs provided by the Applicant to be reasonable and appropriate. Staff further stated that no "used
25 and useful" determination was made and no conclusions should be inferred for ratemaking or rate
26 base purposes.

27 24. Because an allowance for the property tax expense of Applicant is included in the
28 Company's rates and will be collected from its customers, the Commission seeks assurances from the

1 Company that any taxes collected from ratepayers have been remitted to the appropriate taxing
2 authority. It has come to the Commission's attention that a number of water companies have been
3 unwilling or unable to fulfill their obligation to pay the taxes that were collected from ratepayers,
4 some for as many as twenty years. It is reasonable, therefore, that as a preventative measure
5 Applicant annually file, as part of its annual report, an affidavit with the Utilities Division attesting
6 that the company is current in paying its property taxes in Arizona.

7 25. Staff's recommendations are reasonable and we will require that the Applicant file an
8 annual certification that it is in compliance with the condition recommended by Staff in Finding of
9 Fact No. 19.

10 CONCLUSIONS OF LAW

11 1. Applicant is a public service corporation within the meaning of Article XV of the
12 Arizona Constitution and A.R.S. §§ 40-285, 40-301 and 40-302.

13 2. The Commission has jurisdiction over Applicant and the subject matter of the
14 application.

15 3. Notice of the application was given in accordance with the law.

16 4. The financing approved herein is for lawful purposes within Applicant's corporate
17 powers, is compatible with the public interest, with sound financial practices, and with the proper
18 performance by Applicant of service as a public service corporation, and will not impair Applicant's
19 ability to perform that service.

20 5. The financing approved herein is for the purposes stated in the application and is
21 reasonably necessary for those purposes, and such purposes are not, wholly or in part, reasonably
22 chargeable to operating expenses or to income.

23 ORDER

24 IT IS THEREFORE ORDERED that the application of Water Utility of Greater Buckeye, Inc.
25 for authority to issue long-term debt to the Water Infrastructure Financing Authority in an amount not
26 to exceed \$114,500 is hereby approved subject to the condition that if or when equity falls below
27 30.00 percent of total capital, Water Utility of Greater Buckeye is prohibited from distributing more
28 than 25.00 percent of each year's earnings or distributing assets to principals via salaries,

1 management fees, or otherwise in excess of current levels, adjusted for changes in the Consumer
2 Price Index.

3 IT IS FURTHER ORDERED that Water Utility of Greater Buckeye, Inc. shall file
4 certification within 365 days of this Decision, and annually thereafter, with the Commission's Docket
5 Control, as a compliance item in this docket, that it is in compliance with the equity and earnings
6 recommendation of Staff as set forth in Finding of Fact No. 19, above.

7 IT IS FURTHER ORDERED that Water Utility of Greater Buckeye, Inc. shall file, as a
8 compliance item in this docket, a plan that is acceptable to Staff, by May 1, 2006, to increase its
9 equity to 40.00 percent of total capital.

10 IT IS FURTHER ORDERED that Water Utility of Greater Buckeye, Inc. shall file for an
11 increase in permanent rates no later than May 18, 2007, with a 2006 test year, unless the Water
12 Utility of Greater Buckeye, Inc. can demonstrate in its May 1, 2006 filing to Staff's satisfaction that
13 its times interest earned ratio will increase to 1.0 or greater by December 31, 2006.

14 IT IS FURTHER ORDERED that Water Utility of Greater Buckeye, Inc. is hereby authorized
15 to issue equity to complement its borrowings to obtain funds for the arsenic removal water treatment
16 plant to the extent that total borrowings and equity issuances do not exceed the total plant cost and
17 that the Water Utility of Greater Buckeye, Inc. issue no less than \$1.00 of equity for each \$2.27 of
18 additional debt.

19 IT IS FURTHER ORDERED that Water Utility of Greater Buckeye, Inc. is hereby authorized
20 to engage in any transactions and to execute any documents necessary to effectuate the authorization
21 granted herein.

22 IT IS FURTHER ORDERED that such authority is expressly contingent upon Water Utility
23 of Greater Buckeye, Inc.'s use of the proceeds for the purposes set forth in its application.

24 IT IS FURTHER ORDERED that approval of the financing set forth herein does not
25 constitute or imply approval or disapproval by the Commission of any particular expenditure of the
26 proceeds derived thereby for purposes of establishing just and reasonable rates.

1 IT IS FURTHER ORDERED that Water Utility of Greater Buckeye, Inc. shall file with the
2 Commission, as a compliance item in this docket, copies of all executed financing documents within
3 60 days after the transactions are completed.

4 IT IS FURTHER ORDERED that Water Utility of Greater Buckeye, Inc. shall annually file as
5 part of its annual report, an affidavit with the Utilities Division attesting that the Company is current
6 in paying its property taxes in Arizona.

7 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

8 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

9
10
11 CHAIRMAN

COMMISSIONER

12
13
14 COMMISSIONER

COMMISSIONER

COMMISSIONER

15 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
16 Director of the Arizona Corporation Commission, have
17 hereunto set my hand and caused the official seal of the
18 Commission to be affixed at the Capitol, in the City of Phoenix,
19 this ____ day of _____, 2006.

20
21
22
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24
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26
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28
BRIAN C. McNEIL
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

AB:mj

1 SERVICE LIST FOR:

WATER UTILITY OF GREATER BUCKEYE, INC.

2 DOCKET NO.:

W-02451A-05-0615

3 William P. Sullivan
4 CURTIS, GOODWIN, SULLIVAN, UDALL & SCHWAB
5 2712 North Seventh Street
6 Phoenix, AZ 85006

7 John Mihlik
8 WATER UTILITY OF GREATER BUCKEYE, INC.
9 3800 North Central Avenue, Ste. 770
10 Phoenix, AZ 85012

11 Christopher Kempley, Chief Counsel
12 Legal Division
13 ARIZONA CORPORATION COMMISSION
14 1200 West Washington Street
15 Phoenix, Arizona 85007

16 Ernest G. Johnson, Director
17 Utilities Division
18 ARIZONA CORPORATION COMMISSION
19 1200 West Washington Street
20 Phoenix, Arizona 85007

COMMISSIONERS
JEFF HATCH-MILLER - Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES



BRIAN C. McNEIL
Executive Director

ARIZONA CORPORATION COMMISSION

DATE: January 9, 2006

DOCKET NO: W-02450A-05-0607

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Amy Bjelland. The recommendation has been filed in the form of an Order on:

WATER UTILITY OF GREATER TONOPAH

(FINANCING)

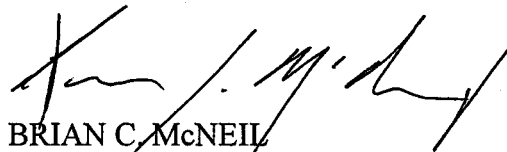
Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00 p.m.** on or before:

JANUARY 18, 2006

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

JANUARY 24 AND 25, 2006

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.


BRIAN C. McNEIL
EXECUTIVE DIRECTOR

1
2 **BEFORE THE ARIZONA CORPORATION COMMISSION**

3 COMMISSIONERS

4 JEFF HATCH-MILLER Chairman
5 WILLIAM A. MUNDELL
6 MARC SPITZER
7 MIKE GLEASON
8 KRISTIN K. MAYES

9
10
11 IN THE MATTER OF THE APPLICATION OF
12 WATER UTILITY OF GREATER TONOPAH FOR
13 AUTHORITY TO ISSUE DEBT.

DOCKET NO. W-02450A-05-0607

DECISION NO. _____

14 ORDER

15 Open Meeting
16 January 24 and 25, 2006
17 Phoenix, Arizona

18 **BY THE COMMISSION:**

19 On August 24, 2005, Water Utility of Greater Tonopah ("Applicant") filed with the Arizona
20 Corporation Commission ("Commission") an application requesting authorization to issue long-term
21 debt to the Water Infrastructure Financing Authority ("WIFA") in an amount not to exceed \$527,000.

22 On October 12, 2005, Applicant filed an amended application requesting the amount be
23 reduced to \$500,000.

24 On October 19, 2005, Applicant filed certification that it had provided notice of the
25 application by publishing in a newspaper of general circulation.

26 On December 15, 2005, the Commission's Utilities Division Staff ("Staff") filed its Staff
27 Report, recommending approval of the application.

28 * * * * *

Having considered the entire record herein and being fully advised in the premises, the
Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

FINDINGS OF FACT

1. Pursuant to authority granted by the Commission, Applicant is an Arizona corporation
that provides water service in and around Hassayampa River, Maricopa County, Arizona. As of

1 December 31, 2004, Applicant provided water service to approximately 214 customers.

2 2. On August 24, 2005, Applicant, as authorized by its Board of Directors, filed with the
3 Commission an application requesting authorization to issue long-term debt to WIFA in an amount
4 not to exceed \$527,000.

5 3. On September 30, 2005, Applicant filed an Amended Financing Application, changing
6 the requested loan amount to \$628,000.

7 4. On October 12, 2005, Applicant filed a Second Amendment to Financing Application,
8 indicating that although the Applicant's Board of Directors authorized securing a loan of up to
9 \$628,000, Applicant limited its request for WIFA financing to an amount not to exceed \$500,000.

10 5. On October 19, 2005, Applicant filed certification that it caused notice of the
11 application to be published in the *West Valley View*, a newspaper of general circulation in Applicant's
12 service area.

13 6. On December 15, 2005, Staff filed its Staff Report, recommending approval of the
14 application with conditions.

15 7. Applicant's request for issuance of debt arises from rules established by the United
16 States Environmental Protection Agency ("EPA") that require the maximum contaminant level for
17 arsenic in potable water to be reduced from 50 parts per billion ("ppb") to 10 ppb, effective January
18 23, 2006.

19 8. The proposed financing will be used for the construction of a water treatment plant to
20 remove arsenic from Applicant's water system in order to meet the new EPA and Arizona
21 Department of Environmental Quality ("ADEQ") standards.

22 9. Staff stated that it examined the construction plans and estimated costs for Applicant's
23 water treatment project and found them to be reasonable and appropriate.

24 10. Staff stated that the proposed financing is for a 20-year loan which is to be amortized
25 at an estimated interest rate of 4.55 percent.

26 11. Staff performed an analysis of Applicant's financial statements based on the twelve-
27 month period ended December 31, 2004.

28 12. For the period ending December 31, 2005, Applicant's capital structure is projected to

1 consist of 1.61 percent short-term debt, 39.61 percent long-term debt, and 58.78 percent equity.

2 13. Staff's analysis showed that if Applicant were to draw the entire \$500,000, the
3 resulting pro forma capital structure would consist of approximately 2.66 percent short-term debt,
4 79.04 percent long-term debt and 18.30 percent equity.

5 14. The Debt Service Coverage ("DSC") ratio represents the number of times internally
6 generated cash will cover required principal and interest payments on long-term debt. A DSC ratio
7 greater than 1.0 means that operating cash flow is sufficient to cover debt obligations. A DSC less
8 than 1.0 means that debt service obligations cannot be met from operations and that another source of
9 funds is needed to avoid default.

10 15. The Times Interest Earned Ratio ("TIER") represents the number of times earnings
11 will cover interest expense on short-term and long-term debt. A TIER greater than 1.0 means that
12 operating income is greater than interest expense. A TIER of less than 1.0 is not sustainable in the
13 long term but does not necessarily mean that debt obligations cannot be met in the short term.

14 16. Based on its analysis of the projected 2005 financial statements, Staff determined that
15 the pro forma effect of Applicant's proposed \$500,000 loan if fully drawn would be a change of the
16 Applicant's TIER from negative 5.29 to negative 0.81 and a lowering of the Applicant's DSC from
17 8.12 to 1.27¹. Staff concluded that the pro forma DSC ratio shows that the Applicant does have
18 adequate cash flow to make interest payments on the proposed debt. However, the Applicant's TIER
19 indicates that the Company's income is insufficient to support the proposed loan in the long term.

20 17. Applicant seeks WIFA financing approval for arsenic treatment of six of its seven
21 wells regulated by the Commission. The current arsenic levels of these wells range from 50 ppb to
22 11 ppb.

23 18. A Staff engineer reviewed the Applicant's proposal and found the estimated project
24 costs provided by the Applicant to be reasonable and appropriate. Staff further stated that no "used
25 and useful" determination was made and no conclusions should be inferred for ratemaking or rate
26 base purposes.

27
28 ¹ Staff stated that the negative TIER indicates that the Company's income is insufficient to support the proposed loan in the long term.

19. Staff concluded that the capital structure that would result from the incurrence of the proposed debt is acceptable in the short-term. However, Staff believes that this capital structure is outside the desirable range for the long-term.

20. Based on Staff's concerns for Applicant's long term capital structure, Staff recommends approval of the Applicant's application for authorization to issue long-term debt to WIFA in an amount not to exceed \$500,00 subject to the following conditions:

a. Applicant is required to file with Docket Control, as a compliance item in this docket, for an increase in permanent rates in 2007 with a 2006 test year unless Applicant can demonstrate to Staff's satisfaction that its TIER will increase to 1.0 or greater by December 31, 2006.

b. Applicant is ordered to file with Docket Control, as a compliance item in this docket, a plan within 30 days of the date of a decision in this proceeding detailing how it will increase its equity to a minimum of 40 percent. Compliance with this condition shall be recognized only if Staff finds the plan acceptable.

21. Because an allowance for the property tax expense of Applicant is included in the Company's rates and will be collected from its customers, the Commission seeks assurances from the Company that any taxes collected from ratepayers have been remitted to the appropriate taxing authority. It has come to the Commission's attention that a number of water companies have been unwilling or unable to fulfill their obligation to pay the taxes that were collected from ratepayers, some for as many as twenty years. It is reasonable, therefore, that as a preventative measure Applicant annually file, as part of its annual report, an affidavit with the Utilities Division attesting that the company is current in paying its property taxes in Arizona.

22. Staff's recommendations are reasonable and appropriate, however, we will allow 90 days to file the equity plan.

CONCLUSIONS OF LAW

1. Applicant is a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. §§ 40-285, 40-301 and 40-302.

2. The Commission has jurisdiction over Applicant and the subject matter of the

1 application.

2 3. Notice of the application was given in accordance with the law.

3 4. The financing approved herein is for lawful purposes within Applicant's corporate
4 powers, is compatible with the public interest, with sound financial practices, and with the proper
5 performance by Applicant of service as a public service corporation, and will not impair Applicant's
6 ability to perform that service.

7 5. The financing approved herein is for the purposes stated in the application and is
8 reasonably necessary for those purposes, and such purposes are not, wholly or in part, reasonably
9 chargeable to operating expenses or to income.

10 **ORDER**

11 IT IS THEREFORE ORDERED that the application of Water Utility of Greater Tonopah for
12 authority to issue long-term debt to the Water Infrastructure Financing Authority in an amount not to
13 exceed \$500,000 is hereby approved.

14 IT IS FURTHER ORDERED that the Water Utility of Greater Tonopah must file with Docket
15 Control, as a compliance item in this docket, for an increase in permanent rates in 2007 with a 2006
16 test year unless the Water Utility of Greater Tonopah demonstrates to Staff's satisfaction that its
17 times interest earned ratio will increase to 1.0 or greater by December 31, 2006.

18 IT IS FURTHER ORDERED that the Water Utility of Greater Tonopah is ordered to file with
19 Docket Control, as a compliance item in this docket, a plan within 90 days of this Decision detailing
20 how it will increase its equity to a minimum of 40 percent. Compliance with this condition shall be
21 recognized only if Staff finds the plan acceptable

22 IT IS FURTHER ORDERED that Water Utility of Greater Tonopah is hereby authorized to
23 engage in any transactions and to execute any documents necessary to effectuate the authorization
24 granted herein.

25 IT IS FURTHER ORDERED that such authority is expressly contingent upon Water Utility
26 of Greater Tonopah's use of the proceeds for the purposes set forth in its application.

IT IS FURTHER ORDERED that approval of the financing set forth herein does not constitute or imply approval or disapproval by the Commission of any particular expenditure of the proceeds derived thereby for purposes of establishing just and reasonable rates.

IT IS FURTHER ORDERED that Water Utility of Greater Tonopah shall file with the Commission copies of all executed financing documents setting forth the terms of the financing, within 90 days of obtaining such financing.

IT IS FURTHER ORDERED that Water Utility of Greater Tonopah shall annually file as part of its annual report, an affidavit with the Utilities Division attesting that the Company is current in paying its property taxes in Arizona.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this ____ day of _____, 2006.

BRIAN C. McNEIL
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

AB:mj

1 SERVICE LIST FOR:

WATER UTILITY OF GREATER TONOPAH

2 DOCKET NO.:

W-02450A-05-0607

3 William P. Sullivan
4 CURTIS, GOODWIN, SULLIVAN, UDALL & SCHWAB
5 2712 North Seven Street
6 Phoenix, AZ 85006

7 John Mihlik
8 Water Utility of Greater Tonopah
9 3800 North Central Avenue, Ste. 770
10 Phoenix, AZ 85012

11 Christopher Kempley, Chief Counsel
12 Legal Division
13 ARIZONA CORPORATION COMMISSION
14 1200 West Washington Street
15 Phoenix, Arizona 85007

16 Ernest G. Johnson, Director
17 Utilities Division
18 ARIZONA CORPORATION COMMISSION
19 1200 West Washington Street
20 Phoenix, Arizona 85007

COMMISSIONERS
JEFF HATCH-MILLER - Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES



BRIAN C. McNEIL
Executive Director

ARIZONA CORPORATION COMMISSION

DATE: June 2, 2006

DOCKET NO.: T-04307A-05-0112

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Amy Bjelland. The recommendation has been filed in the form of an Order on:

WESTEL, INC.

(CC&N/RESELLER)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

JUNE 12, 2006

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

JUNE 27 AND 28, 2006

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.


BRIAN C. McNEIL
EXECUTIVE DIRECTOR

1
2 **BEFORE THE ARIZONA CORPORATION COMMISSION**

3 **COMMISSIONERS**

4 JEFF HATCH-MILLER Chairman
5 WILLIAM A. MUNDELL
6 MARC SPITZER
7 MIKE GLEASON
8 KRISTIN K. MAYES

9 IN THE MATTER OF THE APPLICATION OF
10 WESTEL, INC. FOR A CERTIFICATE OF
11 CONVENIENCE AND NECESSITY TO PROVIDE
12 RESOLD LONG DISTANCE
13 TELECOMMUNICATIONS SERVICE.

DOCKET NO. T-04307A-05-0112

DECISION NO. _____

14 **ORDER**

15 Open Meeting
16 June 27 and 28, 2006
17 Phoenix, Arizona

18 **BY THE COMMISSION:**

19 Having considered the entire record herein and being fully advised in the premises, the
20 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

21 **FINDINGS OF FACT**

22 1. On December 19, 2002, in Decision No. 65459, Westel, Inc. ("Applicant") was
23 granted a Certificate of Convenience and Necessity ("Certificate") to provide competitive resold
24 interexchange telecommunications services.

25 2. Applicant filed its performance bond, as required by Decision No. 65459, on July 12,
26 2004, outside of the timeframe for filing¹. Applicant was thereafter notified by letter on July 20,
27 2004 by the Commission's Utilities Division ("Staff") that its Certificate was "null and void without
28 further order of the Commission." Staff informed Applicant in the same letter that another
application for a Certificate would be necessary for Applicant to provide telecommunications service
in Arizona.

3. On February 16, 2005, Staff docketed a memorandum informing Applicant that its

¹ Decision No. 65459 required that the performance bond be filed within 365 days of the Decision; it was filed 206 days outside of that time frame.

1 Certificate granted by Decision No. 65459, Docket No. T-02694A-96-0348, was null and void.

2 4. On February 17, 2005, Westel, Inc. filed an application for a Certificate to provide
3 competitive resold interexchange telecommunications services within the State of Arizona.

4 5. On February 22, 2005, the Commission's Utilities Division ("Staff") issued its Letter
5 of Insufficiency and First Set of Data Requests to Applicant.

6 6. On October 10, 2005, Staff docketed a memorandum certifying that Applicant's
7 compliance with Decision No. 65459, Docket No. T-02694A-96-0348, had been met.

8 7. On March 14, 2005, Applicant filed its response to Staff's First Set of Data Requests.

9 8. On April 20, 2005, Applicant filed replacement tariffs in this docket, including
10 modified tariff pages to include information regarding collection of advance payments and customer
11 deposits.

12 9. On March 9, 2006, Staff issued its Second Set of Data Requests to Applicant.
13 Applicant's response was filed on April 3, 2006.

14 10. On May 5, 2006, Staff filed its Staff Report in this matter, recommending approval of
15 the application. Staff stated that its review of this application addresses the overall fitness of
16 Applicant to receive a Certificate to provide competitive resold intrastate interexchange
17 telecommunications services; the Applicant's technical and financial capabilities; and whether the
18 Applicant's proposed rates will be just and reasonable.

19 11. Applicant is currently providing service in Arizona and eight other states. Applicant is
20 a switchless reseller. In the event that Applicant experiences financial difficulty, many other
21 interexchange service providers are available for end users. Staff determined that Applicant has
22 sufficient technical capabilities to provide resold interexchange telecommunications services in
23 Arizona.

24 12. Because Applicant plans to collect deposits, Staff recommended that Applicant
25 procure a performance bond equal to \$10,000. Staff recommended that the minimum bond should be
26 increased in increments of \$5,000 if at any time the bond would be insufficient to cover advances,
27 deposits, and/or prepayments collected from the Applicant's customers when the total amount of the
28 advances, deposits, and prepayments is within \$1,000 of the bond amount. Staff recommended that

1 proof of the performance bond be docketed within 365 days of the effective date of this Order or 30
2 days prior to the provision of service, whichever comes first, and must remain in effect until further
3 order of the Commission. Staff noted that Applicant filed a \$10,000 performance bond in connection
4 with Docket No. T-02694A-96-0348 on July 12, 2004.

5 13. Staff recommended that if, at some future time, Applicant does not collect advances,
6 deposits and/or prepayments from its customers, Applicant be allowed to file a request for
7 cancellation of its established performance bond regarding its resold interexchange service with the
8 Commission for Staff review. After Staff review, Staff's recommendation would be forwarded to the
9 Commission.

10 14. Applicant's proposed rates are for competitive services. Staff determined that
11 Applicant's fair value rate base is approximately \$400,000; however, Staff noted that the fair value
12 rate base information provided should not be given substantial weight in this analysis. Staff
13 concluded that the Applicant's proposed rates are just and reasonable.

14 15. Staff concluded that the Applicant is not a monopoly provider of service, nor does it
15 control a significant portion of the telecommunications market. Staff further stated that the Applicant
16 has no market power and that the reasonableness of its rates will be evaluated in a market with
17 numerous competitors. Therefore, Staff stated that the Applicant's proposed tariffs for its
18 competitive services are just and reasonable.

19 16. Commission rules provide pricing flexibility by allowing competitive
20 telecommunication service companies to price their services at or below the maximum rates
21 contained in their tariffs as long as the pricing of those services complies with A.A.C. R14-2-1109.
22 This requires the Applicant to file a tariff for each competitive service that states the maximum rate
23 as well as the effective (actual) price that will be charged for the service. In the event that the
24 Applicant states only one rate in its tariff for a competitive service, Staff recommended that the rate
25 stated be the effective (actual) price to be charged for the service as well as the service's maximum
26 rate. Any changes to the Applicant's effective (actual) price for a service must comply with A.A.C.
27 R14-2-1109, which provides that the minimum rates for the applicant's competitive services must not
28 be below the Applicant's total service long run incremental costs of providing the services. The

1 Applicant's maximum rates should be the maximum rates proposed by the Applicant in its most
2 recent tariffs on file with the Commission. Future changes to the maximum rates must comply with
3 A.A.C. R14-2-1110.

4 **Staff's Recommendations**

5 17. Staff recommended approval of the application based on its evaluation of the
6 Applicant's technical and financial capabilities to provide resold intrastate interexchange service.
7 Staff further recommended that:

8 a. Applicant should be ordered to comply with all Commission rules, orders, and
9 other requirements relevant to the provision of intrastate telecommunications service.

10 b. Applicant should be ordered to maintain its accounts and records as required
11 by the Commission.

12 c. Applicant should be ordered to file with the Commission all financial and other
13 reports that the Commission may require, and in a form and at such times as the Commission
14 may designate.

15 d. Applicant should be ordered to maintain on file with the Commission all
16 current tariffs and rates, and any service standards that the Commission may require.

17 e. Applicant should be ordered to comply with the Commission's rules and
18 modify its tariffs to conform to these rules if it is determined that there is a conflict between
19 the Applicant's tariffs and the Commission's rules.

20 f. Applicant should be ordered to cooperate with Commission investigations
21 including, but not limited to, customer complaints.

22 g. Applicant should be ordered to participate in and contribute to the Arizona
23 Universal Service Fund, as required by the Commission.

24 h. Applicant should be ordered to notify the Commission immediately upon
25 changes to the Applicant's name, address, or telephone number.

26 i. Applicant's intrastate interexchange service offerings should be classified as
27 competitive pursuant to A.A.C. R14-2-1108.

28 j. The maximum rates for these services should be the maximum rates proposed

1 by the Applicant in its proposed tariffs. The minimum rates for the Applicant's competitive
2 services should be the Applicant's total service long run incremental costs of providing those
3 services as set forth in A.A.C. R14-2-1109.

4 k. In the event that the Applicant states only one rate in its proposed tariff for a
5 competitive service, the rate stated should be the effective (actual) price to be charged for the
6 service as well as the service's maximum rate.

7 18. Staff further recommended that the Certificate granted to the Applicant be considered
8 null and void, after due process, if the Applicant fails to meet the following two conditions:

9 a. Applicant shall file conforming tariffs within 30 days from the date of an Order
10 in this matter.

11 b. Applicant shall be required to maintain its performance bond consistent with
12 the findings in the Staff Report. If at some time in the future, the Applicant does not collect
13 from its customers advances, deposits and/or prepayments, the Applicant shall file a request
14 for cancellation of its established performance bond with the Commission for Staff review.
15 Upon receipt of the filing and after Staff review, Staff will forward its recommendations to
16 the Commission.

17 19. This application may be approved without a hearing pursuant to A.R.S. § 40-282.

18 **CONCLUSIONS OF LAW**

19 1. Applicant is a public service corporation within the meaning of Article XV of the
20 Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

21 2. The Commission has jurisdiction over Applicant and the subject matter of the
22 application.

23 3. Approval of the application is in the public interest.

24 4. Pursuant to A.R.S. § 40-282, the Commission may issue this Decision without a
25 hearing.

26 5. Staff's recommendation is reasonable and should be adopted.

27 ...

28 ...

ORDER

IT IS THEREFORE ORDERED that the application of Westel, Inc. for a certificate of convenience and necessity to provide competitive resold interexchange telecommunications services within the State of Arizona shall be, and hereby is, granted.

IT IS FURTHER ORDERED that if Westel, Inc. fails to meet the timeframes outlined in Finding of Fact No. 18, above, then the resold local exchange Certificate of Convenience and Necessity conditionally granted herein shall become null and void after due process.

IT IS FURTHER ORDERED that Staff's recommendations set forth in Finding of Fact No. 17 above are hereby adopted.

IT IS FURTHER ORDERED that Westel, Inc. shall comply with the adopted Staff recommendations as set forth in Finding of Fact No. 17, above.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this ____ day of _____, 2006.

BRIAN C. McNEIL
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

AB:mj

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SERVICE LIST FOR:

WESTEL, INC.

DOCKET NO.:

T-04307A-05-0112

Nick Tondre
WESTEL, INC.
9606 North Mopac, Ste. 700
Austin, TX 78759

Christopher Kempley, Chief Counsel
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ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

Ernest G. Johnson, Director
Utilities Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

COMMISSIONERS
JEFF HATCH-MILLER - Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES



BRIAN C. McNEIL
Executive Director

ARIZONA CORPORATION COMMISSION

DATE: FEBRUARY 27, 2006

DOCKET NO: W-01732A-05-0532

TO ALL PARTIES:

Enclosed please find the recommendation of Chief Administrative Law Amy Bjelland. The recommendation has been filed in the form of an Opinion and Order on:

**WILLOW VALLEY WATER COMPANY
(CC&N EXTENSION)**

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

MARCH 8, 2006

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

MARCH 15, 2006 and MARCH 16, 2006

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Secretary's Office at (602) 542-3931.


BRIAN C. McNEIL
EXECUTIVE DIRECTOR

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 JEFF HATCH-MILLER, Chairman
4 WILLIAM A. MUNDELL
5 MARC SPITZER
6 MIKE GLEASON
7 KRISTIN K. MAYES

8 IN THE MATTER OF THE APPLICATION OF
WILLOW VALLEY WATER COMPANY FOR AN
EXTENSION OF ITS CERTIFICATE OF
CONVENIENCE AND NECESSITY.

DOCKET NO. W-01732A-05-0532

DECISION NO. _____

OPINION AND ORDER

9 DATE OF HEARING: February 1, 2006

10 PLACE OF HEARING: Phoenix, Arizona

11 ADMINISTRATIVE LAW JUDGE: Amy Bjelland

12 APPEARANCES: Mr. William P. Sullivan, CURTIS, GOODWIN,
13 SULLIVAN, UDALL & SCHWAB, P.L.C., on behalf
of Willow Valley Water Company; and

14 Mr. David M. Ronald, Staff Attorney, Legal Division,
15 on behalf of the Arizona Corporation Commission's
Utilities Division.

16 **BY THE COMMISSION:**

17 On July 26, 2005, Willow Valley Water Company ("Willow Valley" or "Applicant") filed an
18 application for an extension of its Certificate of Convenience and Necessity ("Certificate" or
19 "CC&N") with the Arizona Corporation Commission ("Commission") to provide public water utility
20 service to various parts of Mohave County, Arizona.

21 On August 23, 2005, the Commission's Utilities Division ("Staff") issued a letter of
22 insufficiency pursuant to A.A.C. R14-2-411(C).

23 On October 12, 2005, Applicant docketed its Filing of Supplemental Information.

24 On November 10, 2005, Staff issued notice that the application had met the sufficiency
25 requirements of A.A.C. R14-2-411(C).

26 On November 17, 2005, by Procedural Order, a hearing was scheduled for February 1, 2006,
27 and other dates were set for publication of notice and procedural filing by parties to the proceeding.

28 On this date, Applicant filed its Notice of Filing Public Service Franchise.

1 On November 30, 2005, the Applicant filed certification that public notice had been provided
2 in accordance with the Commission's Procedural Order.

3 On January 10, 2006, Staff filed its Staff Report recommending approval of the application
4 with conditions.

5 On February 1, 2006, a full public hearing was convened before a duly authorized
6 Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. The Applicant and
7 Staff appeared with counsel. At the conclusion of the hearing, the matter was taken under
8 advisement pending submission of a Recommended Opinion and Order.

9 * * * * *

10 Having considered the entire record herein and being fully advised in the premises, the
11 Commission finds, concludes, and orders that:

12 **FINDINGS OF FACT**

13 1. Pursuant to authority granted by the Commission, Willow Valley is an Arizona
14 corporation that provides water utility service to 1,415 customers in portions of Mohave County,
15 Arizona pursuant to Decision No. 32436 (August 23, 1960). Willow Valley is a wholly owned
16 subsidiary of West Maricopa Combine, Inc., and according to Staff has no outstanding Commission
17 compliance issues.

18 2. On July 26, 2005, Willow Valley filed an application for extension of its existing
19 CC&N with the Commission to provide public water utility service to various parts of Mohave
20 County, Arizona. The proposed extension area includes approximately 48.53 acres of accretion
21 lands¹ in the area of Mohave County bordering the Fort Mohave Indian Reservation and the Colorado
22 River. From the time of its certification, Willow Valley believed that its CC&N abutted the Colorado
23 River and it has met all service requests within the proposed extension area. However, as stated in its
24 application, Willow Valley "recently became aware that the Extension Area was not recognized as
25 lands existing outside the bed and banks of the Colorado River at the time Willow Valley received its
26 certificate . . . and that the lands are, therefore, not included within the legal description contained in

27 _____
28 ¹ These are lands that gradually accumulate as alluvium and are added to land situated on the bank of the Colorado River
or deposited due to the permanent shifting of the River.

1 Decision No. 32436.”

2 3. On August 23, 2005, Staff issued an insufficiency letter.

3 4. On October 12, 2005, Applicant docketed its Filing of Supplemental Information.

4 5. On November 10, 2005, Staff issued its sufficiency letter.

5 6. On November 17, 2005, by Procedural Order, a hearing was scheduled for February 1,
6 2006, and other dates were set for publication of notice and procedural filing by parties to the
7 proceeding. On this date, Applicant filed its Notice of Filing Public Service Franchise.

8 7. On November 30, 2005, the Applicant filed certification that public notice had been
9 provided in accordance with the Commission’s Procedural Order.

10 8. On January 10, 2006, Staff filed its Staff Report recommending approval of the
11 application with conditions. The Staff Report was revised without objection at hearing to make a
12 technical correction and include a due process provision in the staff recommendation for a condition
13 requisite for approval.

14 9. On February 1, 2006, a full public hearing was convened before a duly authorized
15 Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. The Applicant and
16 Staff appeared with counsel. At the conclusion of the hearing, the matter was taken under
17 advisement pending submission of a Recommended Opinion and Order.

18 **Water System**

19 10. Staff stated that Willow Valley has three water systems; Cimarron Lake System
20 (Public Water System (“PWS”) No. 08-129), the Unit 1 System (PWS No. 08-034, and the King
21 Street System (PWS No. 08-040). The King Street System and the Unit 1 System are interconnected
22 and will serve the CC&N extension area. These two systems include four wells, which have a total
23 production capacity of 1,240 gallons per minute (“gpm”), 293,000 gallons of storage capacity,
24 booster pumps, pressure tanks, and a distribution system serving 1,415 connections as of June 2005.
25 Two wells serve customers and two are on standby. The two wells in use have a combined capacity
26 of 900 gpm. Staff stated that, based on historical growth rates, it is anticipated that the existing
27 service area would have approximately 1,475 total customers at the end of five years. Willow Valley
28 has predicted an additional 24 new lots for the proposed CC&N extension at the end of five years.

1 Staff projected that the existing 900 gpm of production and 293,000 gallons of storage can serve
2 approximately 2,500 connections. Staff concluded that the existing system has adequate production
3 and storage capacity to serve the existing and proposed CC&N extension area and can reasonably be
4 expected to develop additional storage and production as required in the future.

5 11. Willow Valley plans to finance the required utility facilities through advances in aid of
6 construction, which generally take the form of Main Extension Agreements ("MXAs"). MXAs
7 between water utilities and private parties are governed by A.A.C. R14-2-406, and result in developer
8 construction of the facilities, conveyance of the facilities to the utility company, and a refund by the
9 water utility of ten percent of the annual revenue associated with the line to the developer for a period
10 of ten years. Staff recommended that Willow Valley filed with Docket Control, as a compliance
11 item, a Notice of Filing indicating Willow Valley has submitted for Staff review and approval a copy
12 of the fully executed MXAs for water facilities for the extension area within 365 days of a decision in
13 this case.

14 12. Willow Valley received a request to serve the extension area from the developer of
15 Willow Valley Estates 20, McKellips Land Corporation. Mr. Joseph Mihlek, President and Chairman
16 of Willow Valley, testified that the developer projects approximately 24 lots will be occupied within
17 two years.

18 13. Willow Valley proposed to provide water utility service to the extension area under its
19 authorized rates and charges. Mr. Mihlek testified that the extension area is contiguous to Willow
20 Valley's current CC&N area and that the closest alternate water utility is located two miles away
21 from the CC&N extension area. He stated that Willow Valley is current on its property taxes.

22 14. Staff stated that the Arizona Department of Environmental Quality ("ADEQ") has
23 determined that this system is currently delivering water that meets ADEQ water quality standards.

24 15. Willow Valley is not located in an Active Management Area and therefore is not
25 subject to Arizona Department of Water Resources ("ADWR") reporting and conservation rules.
26 Staff stated that Willow Valley has not received a copy of the Developer's Letter of Adequate Water
27 Supply for the CC&N extension area from ADWR. Therefore, Staff recommended that Willow
28 Valley be ordered to file with Docket Control, as a compliance item, copies of the Developer's

1 Adequate Water Supply letter, stating that there is adequate water, no later than one year after a
2 decision in this docket.

3 16. Rules established by the United States Environmental Protection Agency ("EPA")
4 require the maximum contaminant level ("MCL") for arsenic in potable water to be reduced from 50
5 parts per billion ("ppb") to 10 ppb, effective January 23, 2006. Staff stated that the most recent lab
6 analysis of the wells for the three water systems indicates that the arsenic levels range from 2.2 to 7
7 ppb. Based on these arsenic concentrations, Willow Valley is in compliance with the new arsenic
8 MCL.

9 17. Staff stated that a Curtailment Plan Tariff ("CPT") is an effective tool to allow a water
10 company to manage resources during periods of water shortages due to pump breakdowns, droughts,
11 or other unforeseeable events. Willow Valley has a curtailment tariff on file with the Utilities
12 Division.

13 18. Arizona law requires every applicant for a CC&N or CC&N extension to submit
14 evidence to the Commission that the applicant has received consent, franchise or permit from the
15 proper authority prior to being granted the CC&N or CC&N extension. Willow Valley is located in
16 an unincorporated part of Mohave County, and has docketed its franchise agreement with Mohave
17 County.

18 **Staff's Recommendations**

19 19. Staff recommended that the Commission approve the Willow Valley application for a
20 CC&N extension within portions of Mohave County, Arizona, to provide water service, subject to
21 compliance with the following conditions:

22 (a) That Willow Valley charge its authorized rates and charges in the extension
23 area.

24 (b) That Willow Valley file with Docket Control, as a compliance item, a Notice
25 of Filing indicating Willow Valley has submitted for Staff review and approval a copy of the fully
26 executed main extension agreements for water facilities for the extension area within 365 days of a
27 decision in this case.

28 (c) That Willow Valley obtain and file with Docket Control, as a compliance item,

1 copies of the Developer's Letter of Adequate Water Supply, stating that there is adequate water, no
2 later than one year after a decision in this docket.

3 20. Staff further recommended that the Commission's Decision granting the requested
4 CC&N extension to Willow Valley be considered null and void after due process should Willow
5 Valley fail to meet Condition Nos. (b) and (c) listed above within the time specified.

6 **CONCLUSIONS OF LAW**

7 1. Willow Valley is a public service corporation within the meaning of Article XV of the
8 Arizona Constitution and A.R.S. §§ 40-281 and 40-282 *et seq.*

9 2. The Commission has jurisdiction over Willow Valley and the subject matter of the
10 application.

11 3. Notice of the application was provided in accordance with law.

12 4. There is a public need and necessity for water utility service in the proposed extension
13 area.

14 5. Willow Valley is a fit and proper entity to receive a water CC&N extension to include
15 the service area more fully described in Exhibit A attached hereto, subject to compliance with the
16 conditions set forth above.

17 **ORDER**

18 IT IS THEREFORE ORDERED that the application of Willow Valley Water Company, Inc.
19 for an extension of its existing water Certificate of Convenience and Necessity to include the area
20 described in Exhibit A attached hereto and incorporated herein by reference be, and is hereby
21 approved, subject to the conditions more fully described herein.

22 IT IS FURTHER ORDERED that Willow Valley Water Company, Inc. charge its authorized
23 rates and charges in the extension area.

24 IT IS FURTHER ORDERED that should Willow Valley Water Company, Inc. fail to meet
25 the conditions enumerated in the following two Ordering Paragraphs, the Commission's Decision
26 granting the requested Certificate extension to Willow Valley Water Company, Inc. shall be
27 considered null and void after due process.

28 IT IS FURTHER ORDERED that Willow Valley Water Company, Inc. file with Docket

Control, as a compliance item in this docket, a Notice of Filing indicating Willow Valley Water Company, Inc. has submitted for Staff review and approval a copy of the fully executed main extension agreements for water facilities for the extension area within 365 days of a decision in this case.

IT IS FURTHER ORDERED that Willow Valley Water Company, Inc. obtain and file with Docket Control, as a compliance item, copies of the Developer's Letter of Adequate Water Supply, stating that there is adequate water, no later than one year after a decision in this docket.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this ____ day of _____, 2005.

BRIAN C. McNEIL
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

1 SERVICE LIST FOR:

WILLOW VALLEY WATER COMPANY, INC.

2 DOCKET NO.:

W-01732A-05-0532

3

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REVISED EXHIBIT "A"
(consisting of Parcels A, B, and C)
Legal Description
Page 1 of 1

PARCEL "A":

All that portion of the abandoned channel of the Colorado River, as it existed immediately prior to re-channelization, that lies South of the North line of fractional Section 21, T18N, R22W, G. &S. R. B. &M., Mohave County, Arizona, and that lies East of the Easterly dredging right of way line of the present channel of the Colorado River, approximately described as follows:

COMMENCING at the Northeast Corner of said fractional Section 21;
thence S 76° 17' 28" W, along the North line of said fractional Section 21, 2796 feet more or less to the point of beginning, said point being a point on a meander line of the left descending bank of said abandoned channel;
thence S 42° 51' W 250 feet to a point;
thence S 57° 39' W 390 feet to a point;
thence S 78° 45' W 260 feet to a point;
thence S 60° 44' W 200 feet to a point;
thence S 65° 57' W 477 feet to a point;
thence S 39° 51' W 260 feet to a point;
thence S 45° 43' W 390 feet to a point on the Easterly dredging right of way line of said present channel;
thence Northerly along said right of way line, which is a curve to the right, having a tangent that bears N 02° 52' 39" E from the last described point, a radius of 7190.90 feet and a central angle of 6° 17' 40", 790 feet to a point on the North line of said fractional Section 21;
thence N 76° 17' 28" E along the North line of said fractional Section 21, 1778 feet to the true point of beginning. Containing 13.60 Acres more or less.

PARCEL "B":

All that portion of the abandoned channel of the Colorado River, as it existed immediately prior to re-channelization, that lies South of the North line and a Westerly prolongation thereof, of fractional Section 21, T18N, R22W, G. &S. R. B. &M., Mohave County, Arizona, and that is bounded on the East by the Easterly dredging right of way line of the present channel of the Colorado River and is bounded on the South and East by the left descending bank of the abandoned channel of the Colorado River as it existed immediately prior to dredging, and is bounded on the West by the left descending bank of the present normal-flow channel of the Colorado River, approximately described as follows:

COMMENCING at the Northeast Corner of said fractional Section 21;
thence S 76° 17' 28" W, along the North line of said fractional Section 21, 4574.36 feet to a point, said point being the intersection of the North line of said fractional Section 21 and said Easterly dredging right of way line of the present channel of the Colorado River and the Point of Beginning;
thence Southerly along said right of way line, which is a curve to the left having a tangent that bears S 09° 10' 19" W from the last described point, a radius of 7190.90 feet and a central angle of 6° 17' 40", 790 feet to a point, said point being a point on a meander line of the left descending bank of said abandoned channel;
thence along a meander line of said abandoned channel S 44° 59' W 579 feet to a point;

REVISED EXHIBIT "A"
(consisting of Parcels A, B, and C)
Legal Description

Page 2 of 2

thence along a meander line of said abandoned channel S 16° 00' W 418 feet to a point, said point being on a Westerly prolongation of the South riparian Section line of fractional Section 21 as established by the United States Bureau of Land Management and also being a point on a meander line of the left descending bank of the present normal-flow channel of the Colorado River;
 thence along said left bank of the present normal-flow channel N 01° 30' E 680 feet to a point;
 thence N 10° 02' E 200 feet to a point;
 thence N 01° 26' E 220 feet to a point;
 thence N 13° 29' E 410 feet to a point, said point being on a Westerly prolongation of the North line of said fractional Section 21;
 thence along the North line of said fractional Section 21 and a Westerly prolongation thereof N 76° 17' 28" E 480 feet to the true point of beginning. Containing 11.43 Acres more or less.

PARCEL "C":

All of that portion of the alluvium lands of the Colorado River lying West of and adjoining fractional Section 21, T18N, R22W, G. & S. R. B. & M., Mohave County, Arizona, bounded on the Northwest by the meander lines of the left descending bank of said River immediately prior to the re-channelization, bounded on the Northeast by the 1905 GLO Meander line, and bounded on the South by a line that is the South riparian section line and follows an existing line of occupation. Said boundaries being approximately described as follows:

Beginning at the South quarter corner of said Section 21;
 thence South 89° 50' 52" West, a distance of 540.84 feet more or less to the point of beginning, said point being the BLM Brass Cap Monument marking the Meander Corner on the South line of said Section 21;
 thence S 82° 18' 43" W 1512.93 feet to a 1 inch iron pipe tagged RLS 5576, said 1 inch iron pipe being on the Easterly prolongation of an existing fence;
 thence along said fence S 80° 24' 40" W 421.67 feet to a 1 inch iron pipe tagged RLS 5576, and the Westerly termination of said fence;
 thence continuing S 80° 24' 40" W 16 feet more or less to a point on the meander line of the left descending bank of the Colorado River immediately prior to the re-channelization, said point also being the most Southerly Corner of Parcel 2 of that certain Judgment filed January 30, 1976, at Pages 47-49 of Book 391 of Official Records of said Mohave County, Arizona;
 thence along said meander line N 16° 00' E 418 feet;
 thence N 44° 59' E 579 feet to a point on the Easterly dredging right of way line of the present channel, said point also being the most Southerly Corner of Parcel 1 of the before mentioned Judgment;
 thence N 45° 43' E 390 feet to a point on the 1905 GLO Meander line shown on the Plat as N 53° 00' W 21.40 chains;
 thence along said GLO Meander line S 53° 00' E 1387 feet, more or less, to the point of Beginning. Containing 23.5 acres more or less.